1944. File No. S Dwr. 10/44

Examined
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Legal- DEPARTMENT

A- BRANCH

Subject:—

Civil Suit No. 503 of 1943.

Gurappa Kallappa Holiyannavar — Pltff

V/s.

The Province of Bombay — — Deft.

Claim - Rs. 4,000.

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967 (E.K)

File No. S Dwr. 10/44

Std. Sects. Slip 24-B

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To

The Remembrancer of Legal Affairs,

Bombay.

Subject:-Sanction of defence in L.C.Suit No.503 of 1943 of F.C.Court, Dharwar.

Sir,

In accordance with rule 118 of the Law Officers Rules, I have the honour to submit herewith chronological statement of facts, grounds of defence and draft written statement in triplicate together with all the papers in respect of this suit for favour of according necessary sanction for the defence of this suit.

1. L.C.Suit No.503 of 1943.
2. The suit was instituted on 23-12-1943 in the court of the First Class Sub-Judge, Dharwar.
3. Plff:-Gulappa Kallappa Holiyannavar.
   Vs.
   Deft:-The Province of Bombay.
4. The value of the claim is Rs.4000/-.
5. The suit has been fixed on 7th June 1944 for putting in written statement on behalf of deft Government.
6. Notice of suit under Section 80 of the C.P.C. has been given to the Collector, on the ~~2nd October~~ 2-9-
7. It is submitted, therefore, that sanction for the defence of this suit may kindly be accorded with such additions and alterations as may be deemed fit and proper.

Your obedient servant,

S. R. Munshi

District Government Pleader.

Respectfully submitted through the Collector of Dharwar.

S. R. Munshi

JUN 3 [illegible]

District Government Pleader.

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L.C.Suit No.593 of 1943.

IN THE COURT OF THE FIRST CLASS SUB-JUDGE7.

AT DHARWAR.

CHRONOLOGICAL STATEMENT OF FACTS.

Plff:- Gulappa Kallappa Holiyannavar of Nagnur Tal. Navalgund.

Vs.

Deft:- The Province of Bombay.

1. The suit is for actual posses. ion and of the suit land R.S.No.24 acres 23-27 Asmtt.47-0-0 valued at Rs.4000/- of Amargol village Taluka Navalgund, Dharwar Dist. with ~~connexion~~ crops, if any, from deft 1 (Govt) on the ground that the plff is the owner thereof by virtue of the sale deed dated 30-7-1942 that the possessory mortgage deed, dated 3-4-1930 executed by defts 3 and 4 and other persons in favour of Government (Secretary of State) for securing forest dues of Mr.D.B.Sabnis, was unauthorised and illegal and that deft is in wrongful possession of the suit land (b) a declaration that deft 2 has not obtained any title to the said land under the sale deed dated 8-1-1940 passed in favour of Vishwanathsa and another, sons Rajansa and (c) future mesne profits and (d) costs and equitable reliefs.

2. It appears from the history of the case that D.B.Sabnis who was a transferee of the forest contract originally held by one Venkatesh Mutalic, became a defaulter and on 7th November 1925, on the request of the D.F.O.N.D Kanara, the Mamlatdar, Navalgund was asked to take necessary steps to recover the forest dues by sale of the right title and interest of D.B.Sabnis, in the lands situate in Navalgund Taluka. The land R.S.No.24 of Amargol in Navalgund Taluka, the subject matter of the present suit, was obviously included in those lands on 7-11-1925; steps to recover the forest dues as arrears of land revenue were taken by the revenue authorities, by sale of

Office notes.

the right title and interest of D.B.Sabnis in the lands in Navalgund Taluka. It appears that on 12-11-1925 proclamation of sale of suit S.Nos.24 and 313 of Amargol was issued. It appears that Venkatesh alias Shripad minor son of D.B.Sabnis the defaulting contractor filed a suit (Spl.Suit No.47/1925) in the First Class Sub-Judge's court, Dharwar, for partition and possession of his undivided family properties against his father D.B.Sabnis. In this suit the minor Venkatesh was repre--sented by his next friend Shankar Ramchandra, son-in-law of Lingo Annaji Yajaman. It may be noted here that the defaulter D.B.Sabnis was the natural son of this Lingo Annaji Yajaman. Subsequently this special suit for partition was ~~xxxxxxx~~ compromised and by virtue of the compromise decree, Venkatesh got his share i.e. land R.S.No.24 of Amargol, the subject - matter of the present suit among other properties. It appears that in the R of R the name of the minor Venkstesh was entered as owner and Kabjedar against R.S.No.24 of Amargol, the present suit land.

(Office Note)

3. In 1925 D.B.Sabnis filed L.C.Suit No.17 of 1925 in the District Court, Dharwar, to avoid his liability and obtained an order staying proceedings for recovery started by the revenue authorities. On 10th September 1926, the plaint in L.C.Suit No. 17 of 1925 was withdrawn with permission to bring a fresh suit. In October 1926 the Mamlatdar, Navalgund, again started recovery proceedings and on 9-2-1927 the D.D.C. III Division, ordered sale of the properties of D.B.Sabnis in Navalgund Taluka. The Mamlatdar Navalgund issued proclamation of sale of the said properties & the sale was fixed on 9-4-1927. In March 1927 D.B.Sabnis filed again another suit L.C.Suit No.149 of 1927 (G.R.L.D.No.S.Dwar No.7 of 5-10-1928) of F.C.Court, Dharwar ~~xxx~~ to avoid payment of - forest dues. On 12th April 1927 Sabnis obtained a stay order - paneing the decision of the suit. But on 7th December 1927 this suit L.C.Suit No.149 of 1927 was also dismissed (R.L.A's No.1712 of 24-5-1927.)

GRLD no 1391 d 27-4-1926.

4. In 1928 sale proclamations were once more issued by the Mamlatdar, Navalgund, and on 27-4-1928, ~~xx~~ sale of the lands of D.B.Sabnis in Navalgund Taluka was again fixed.

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GR LDno
SDWR77
5-10-1928

5. On 26th March 1928 Venkatesh alias Shripad minor son of D.B.Sabnis and Rangubai wife of D.B.Sabnis filed L.C.Suit No.113 of 19.8 in F.C.Sub-Judge's court, Dharwar, against the Secretary of State for India in Council for (1) a declaration that lands attached and sought to be sold for recovery of forest dues from D.B.Sabnis were of their ownership (by virtue of the compromise decree in special suit No.47 of 19.5 of F.C.Court, Dharwar) and for injunction restraining the Government from selling the lands. One of the lands sought to be sold was the present suit land R.S.No.24 of Amargol. In Ex.13 written statement Government contended in L.C.Suit No.113 of 1928 as follows:-" The decree in Spl.Suit No.47/1925 of Dharwar Court mentioned in para 2 of the plaint is for all - purposes, a collusive and fraudulent decree and obtained with an intention to defeat and delay the claim of - Government which was not a party to it, though the land was attached before it was passed. The said decree is no way binding on the deft (Govt), does not invest the plff with any title to the suit property. The deft does not admit that Lingo Annaji is the real guardian and Wahivat--dar of the property in suit for the plff, nor does he admit that plff really took a share in those properties under the terms of the decree in Special Suit No.47/25 mentioned above. The provisions of section 53 of the T.P. Act are a bar to the plff's suit. The properties in suit are liable to be attached and sold for the debts of D.B. Sabnis under section 53 of the T.P.Act and under the provisions of Hindu Law and that the order of sale by the revenue authorities is legal and proper. By Ex.20, the following issues were raised by the court.

1. Whether the plffs are not liable for the amount due from D.B.Sabnis.
2. Whether the plffs got the decree in Spl.Suit No.47/25 after attachment of plaint property by the revenue authorities ?
3. Was the decree in Slp.Suit No.47/25 a. ~~ex~~ - collusive and fraudulent decree ?

~~On~~

On 19-2-1929 however the suit in L.C.No.113/28 was withdrawn by the plff (with liberty to bring a fresh

suit).

6. It appears that the Collector of Dharwar with the approval of the Commissioner, S.D., ordered that R.S.Nos.24 of Amargol and another land R.S.No.313 of Amargol of D.B.Sabnis defaulter should be sold, provided the forest dues were not paid before the 31st March 1929.

7. It also appears that on the 14th March 1929, the Mamlatdar, Navalgund reported to the Collector that the lands R.S.Nos.24 and 313 of Amargol then stood in the name of Venkatesh alias Shripad minor son and Rangubai wife of the ~~minor~~ defaulter D.B.Sabnis and none was likely to bid at the auction and asked for orders to enter the name of D.B.Sabnis against those lands. After consultation with the Assistant Government Pleader, Dharwar, the Collector asked the Mamlatdar, Navalgund, to substitute the name of D.B.Sabnis against the said lands in the Kabjedar column of R of R, provided it was found that D.B.Sabnis was found to be in actual possession of the said lands. The entries were accordingly changed in the R R by the Mamlatdar, Navalgund and on 13-5-1929 the present suit lands were put to auction. But no sale took place for want of bidders.

Office note

8. In 1929 Lingo Annaji Yajaman and the grand-father of minor Venkatesh approached the Collector, Dharwar, for an amicable settlement and as a result of the settlement the mortgage dated 3-4-1930 referred to in para 2 above was executed by Lingo Annaji Yajaman as guardian of minor Venkatesh and other persons.

9. The previous history of the suit land mentioned in para 1 above is to be found in G.R.L.D.No.11983 of 17th November 1939. It will be seen that on 3-4-1930 Venkatesh alias Shripad Dattatraya Sabnis (No.6) then a minor by his guardian and grand father Lingo Annaji Yajaman executed a mortgage deed in favour of the Secretary of State for India in Council for securing the payment of forest dues with interest and decretal costs amounting to a total sum of Rs.3552-9-0, (Rs.3207-1-0 forest dues & Rs.345-8-0 decretal costs). According to para 4A of the mortgage deed the present suit land in ~~Ex~~Suit R.S.No.24 of Amargol village, Taluka Navalgund, measuring 27 acres and 27 gunthas was to remain in the possession of the mortgagee (the Government) for a period of 8 years. It still -

Paras 1 to 15 of GRL No.11983 dt 17 Nov 1939

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continues to be in Government possession.

10. It is now necessary to state here that in L.C. Suit No.189 of 1940 which was filed for recovery of the mortgage debt, the minor Venkatesh was at first represent--ed by his guardian Lingo Annaji Yajaman. Subsequently, after the filing of the suit, the guardian Lingo Annaji died and by that time Venkatesh had attained majority. Accordingly Venkatesh was described as a major in the suit and summons was issued to him (Ex.67 in L.C.Suit No.189/1940). He appeared through two pleaders but did not file any written statement and the pleader put in a pursis that he had no instructions. On 27-2-1943 the F.C.S.J.Dharwar, passed a mortgage decree as stated below.

G.R.L.D.No.11988 of 17-11-1939.

11. On 27-2-1943 in L.C.Suit No.189/40 the decree was passed in favour of Government (mortgagee) as follows "It is hereby declared that Rs.3412-4-4, were due to the plff (Govt) under the suit mortgage at the date of suit. I allow future interest on the principal amount of - Rs.2409-4-4 at the rate of 6% per annum from the date of suit till realization. The amount of income, if any, enjoyed by the plff from the lands in their possession from the date of suit to go towards the satisfaction of the decretal debt. "Defts are allowed to pay the above decretal amount by two six monthly instalments. The first instalment being payable six months hence. The two - instalments to be of equal amount. In case the defts fail to pay any one instalment, plff to recover the amou due then by sale of sufficient portion of the suit lands except those purchased by defts No.11 viz., S.Nos.133 & 291 of Amargol, Taluka Navalgund, under the provisions of the Sec.15 of D.A.R.Act. At the time of effecting sale, the lands purchased by defts 10,12 and 13 should be sold last and only in case of them other mortgaged lands are insufficient to meet the suit mortgage debt". Plff is at liberty to apply for a personal decree

for the balance from the estate of the deceased deft 1 and defts 2 to 6. Plff to pay one set of costs of the suit to deft 11, the other defts to bear their own costs of the suit. None of the defts except defts 2 to 6 and the estate of the deceased deft 1 are personally liable for any ofx the decretal debt".

12. Nowx it appears that one Rajaramsa Hanamantsa obtained a money decree in L.C.Suit No.92 of 1936 of Gadag court against D.B.Sabnis in execution of the decree in L.D.No.750 of 1935 purchased for Rs.1000/- suit S.No.24 of Amargol on 9-12-1937. Subsequently on 8-1-1940 Vishwanathsa and another son of the deceased Rajaramsa sold the suit land to A.S.Patil (present deft No.2) for Rs.600/- subject to the mortgage of Government dated 3-4-1930 now mortgaged in the mortgage decree in L.C.Suit No.1(of 1940 to which A.S.Patil was a party i.e.deft.

13. It appears that on 30-7-1943 by a registered sale deed the present plff purchased the suit land R.S.No.24 of Amargol f.... Venkatesh after attaining majority, for Rs.4000/-

14. On 20-9-1943 the plff gave notice of suit under sec.80 C.P.C. to the Collector of Dharwar who accepted the same on the 2nd October 1943.

15. On 23-12-1943 plff filed the present suit in the F.C. Court, Dharwar, praying for (1) actual possession of suit land R.S.No.24 of Amargol Taluka Navalgund on the ground that he became the owner thereof by virtue of sale deed dated 30-7-1943, that the mortgage dated 3-4-1930 executed by defts 3 and 4 and other persons in favour of the Secretary of State for securing forest dues, is unauthorised, illegal and that deft Government is in wrongful - possession of the land (2) a declaration that deft 2 has not obtained any title to the suit land by virtue of his sale deed dated 8-1-1940 executed by Vishwanathsa and his brother (3) for future mesne profits & (4) for costa and other equitable reliefs.

GROUNDS OF DEFENCE.

1. It should be contended that plff is not the owner and has not obtained any title to the land in suit by virtue of the sale-deed dated 30-7-1943 as alleged by him. The consideration of the sale deed, the bona fide nature thereof should also be denied. It should be further contended that deft 3 Venkatesh the vendor of plff had no subsisting title to the land at the date of transfer by sale. It should also be urged that the sale deed is not binding upon this deft.

2. Thr plff's contention is that he got the suit land to his share by virtue of a compromise decree in a partition suit (Spl.Suit No.47 of 1925) between himself and his father D.B.Sabnis. With regard to this, the same contention as was made by Government in L.C.Suit No.118 of 1928 should be put forward viz., "The decree in Spl.suit No.47 of 1925 of Dharwar Court is for all purposes, a collusive and fraudulent decree obtained with an intention to defeat or delay the claim of Government which was not a party to it, in respect of forest dues from D.B.Sabnis which (Forest Dept) had taken up proceedings against the land in suit for recovery of the said dues. The said decree is in no way binding upon the Government, does not invest the plff with any title to the suit property. The Government does not admit that Venkatesh really took a share in the properties under the terms of the decree in Spl.Suit No.47 of 1925. The provisions of section 53 T.P.Act are a bar to the plff's claim". The land in suit was liable to be attached and sold for the forest debts of Venkatesh's father, both the under the provisions of Hindu Law and sec.53 of the T.P.Act."

3. The plff's next contention is that the name of Venkatesh was entered in R of R as owner of and Kabjedar against the suit land R.S.No.24 of Amargol after the said land came to his share under the compromise partition decree in Spl.Suit No.47 of 1925, but the revenue authorities removed the name of Venkatesh from R R and entered the name of D.B.Sabnis therein unauthorisedly and illegally with a ulterior motive. even if that is true the ulterior motive.

The answer should be that it is true that the name of Venkatesh was removed from the R of R and that the name of D.B.Sabnis was entered therein, as the latter was found to be in actual possession. The allegation that the removal of the name of Venkatesh was unauthorised and illegal and with an ulterior motive should however be denied. It should also be urged in this connect--tion that Venkatesh came into actual possession of the said land.

4. The next contention of plff is that the mortgage debt of 1930 is invalid and the land in suit could not be mortgaged to Government for repayment of debts of D.B.Sabnis. Plff, therefore, contends that the mortgage decree obtained by Government in L.C. Suit No.189 of 1940 is illegal, null and void. With respect to this contention, it will be seen that the forest debt payable by D.B. Sabnis was an antecedent debt of the family of D.B.Sabnis and his son Venkatesh was under a pious obligation to repay it. The debt had also been incurred by Sabnis before partition took place - between him and his son Venkatesh, assuming that the partition to be genuine. Venkatesh was, therefore, liable to pay it under the principles of Hindu Law. It may be urged that under the partition decree of Spl.S.No.47 of 1925 one of the terms of the compromise was that the said debts were to be paid by the father D.B.Sabnis but not by Venkatesh. But Government was not a party to the decree and would not be bound by it. It was open to Government to proceed against the family property of the defaulter. And as a matter of fact the land in suit had been proclaimed for sale in April 1928. and soon after Venkatesh who was then a minor brought L.C.Suit No. 113 of 1928 for a declaration that the land in suit was not liable for sale for the debts of his father, as he was the owner thereof by virtue of the partition decree in Spl.Suit No.47 of 1925. But on 19-2-1929 L.C.Suit No.113 of 1928 was withdrawn without being allowed any liberty to file a fresh suit on the same cause of - action, in respect of the same subject matter. Therefore Venkatesh would be precluded from bringing a fresh suit in respect of the - same subject matter. Under these circumstances, the land in suit remained liable for the debts of the defaulter and it would not be open to Venkatesh or his transferee from contending otherwise. It follows that both because (1) Venkatesh was liable to pay his

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his father's debts and (2) because the land in suit remained liable for payment of the said debts; the mortgage executed by Venkatesh by his then guardian Lingo Annaji who was his guardian was binding upon Venkatesh. The decree obtained by Government upon such a mortgage would be quite legal and valid and binding upon Venkatesh and his transferee.

5. Furthermore, Venkatesh was a party (defendent No.6) to L.C.Suit No.189 of 1940 and he did appear through pleader. It was open to him to put forward all the contentions avail--able to him, but did not care to put any written statement. Venkatesh and his transferee the present plff would be debarr-ed from raising any contentions regarding the validity of the mortgage debt or the mortgage decree and the principles of resjudicate and estoppel by record would apply. Vekatesh might and ought to have raised the contentions which the plff now seeks to do in respect of the mortgage, and having failed to do so, the plff himself cannot himself do it.

6. Neither did Venkatesh attack the validity of the sale of the suit land in favour of deft 2 (A.S.Patil) in L.C.Suit No.189 of 1940 to which the latter was a party. This failure on the part of Venkatesh would debar him and the plff from attacking the said sale in this suit. However this deft is not much concerned with the rights of deft No.2, as he is a purchaser in favour of Government.

7. Government is in possession of the suit land under the terms of the mortgage and its possession is lawful. Plff is not entitled to recover possession of it from Government as he has no subsisting title to it.

DRAFT WRITTEN STATEMENT.

1. Plff's suit is not maintainable. His claim is denied in toto.

2. The sale deed of 30-7-1943 relied upon by plff is not admitted. It is denied that plff got any title to the land in suit under the said sale deed. It is denied that the plff's vendor Venkatesh had any subsisting title to the said land at the date of transfer. The validity of the said sale and the

bonafide nature of the transaction with regard to it are equally denied.

3. The allegations in para 2 of the plaint that D.B. Sabnis father of deft 3 was a person of immoral character and habits wasting family property and incurring debts for immoral purposes are denied. The further allegation that deft 3 became owner of the suit land by virtue of the compromise decree is not also admitted. The decree in Spl. suit No.47 of 1925 of Dharwar Court mentioned in para 2 of the plaint is for all purposes is for all purposes a - collusive and fraudulent decree obtained with a view to defeat and delay the claim of Government which was not a party to it in respect of forest dues of nearly Rs.3200/- owed by D.B.Sabnis which had started proceedings as early as 1925 against the land in suit for recovery of the forest dues The said decree is in no way binding upon this deft and does not invest Venkatesh with any title to the suit property. This deft does not admit that Venkatesh (deft 3) really took a share in the said spl.suit.

4. The provisions of sec.53 of T.P.Act are a bar to the claim of deft 3 and his transferee the plff.

5. The land in suit was liable to be attached and sold for the debts of D.B.Sabnis, both under the provisions of the Hindu Law and Sec.53 of the T.P.Act.

6. The allegations in paras 2 and 3 of plaint regarding the entries of D.B.Sabnis's name in the place of deft 3 - against the suit land are not admitted. It is true that the revenue authorities struck off the name of deft 3 from the R of R and entered the name of D.B.Sabnis against the suit land, but this action was taken as the said land was found to be in actual possession of D.B.Sabnis and not that of deft No.3 who had some how manoavered to have his name entered therein. The action of the revenue authorities in this respect is legal and authorised and has never been challanged by deft 3 himself.

7. The allegations in paras 4 and 5 of plaint regarding

the mortgage of the suit land and the decree in respect of L.C.Suit No.189 of 1940 are denied. This deft asserts that deft No.3 was under a pious obligation under the Hindu Law to pay off his father's debts, which the deft submits are neither immoral nor illegal. The suit land, whether it remained the joint family property of deft 3 and his father or became the separate property of deft 3 by virtue of the compromise decree in Spl.Suit No.47 of 1925, as alleged, was and is always liable for recovery of the said debt. Recovery proceedings by attachment and sale having been taken up by this deft against the said property, deft 3 brought L.C.Suit No.113 of 1928 of Dharwar court for declaration and injunction. In 1929 deft 3 however withdrew the suit in question with liberty to file a fresh suit. Deft 3 and the plff who alleges to be a transferee from him are debarred from filing this suit in respect of the same subject matter.

8. After the withdrawal of the above mentioned suit L.C.Suit No.113 of 1928 this deft again started - recovery proceedings against the suit land and some others belonging to the defaulter and his surety. Deft 3 by his then guardian and grand-father Lingo Annaji Yajaman along with his father and the defaulter his surety and other concerned - parties entered into an amicable settlement with the Collector of Dharwar and passed a mortgage bond dated 30-4-1930 with this deft securing the forest dues and other decretal debts owed by them. The mortgagee having not been satisfied, this deft filed L.C.Suit No.189 of 1940 for recovery of mortgage debts and obtained a decree on 27-2-1943. Deft 3 was a party to the said mortgage suit; though duly served and put in his presence he did not put forward any defence. Under the circumstances, the mortgage debt, as well as the mortgage decree in L.C.Suit No.189 of 1940 in favour of thi deft and against deft 3 are all binding, valid and cannot be impeached either by deft 3 or by the plff.

9. Plff's claim so far as it chamlanges the mortgage debt and the mortgage decree, is barred by res judicate and

by record.

10. This deft is not much concerned with the validity of the sale of the suit land in favour of deft 2, as that sale is subsequent to the mortgage in favour of this deft and as deft 2 is made liable to pay the mortgage amount of this deft. However, the allegations made by plff in paras 6 and 7 of the plaint in this respect are not admitted.

11. The allegation that this deft is in wrongful poss-
-ession of the suit land is denied.

12. Plff is neither entitled to possession of the suit land nor to the mesne profits.

13. The deft submits that the plff's suit should be dismissed with costs.

(Translation of the plaint into English)

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L.C.Suit No.503 of 1942.

In the Court of the First Class Sub-Judge,

at Dharwar.

Plff:-Gulappa Kallappa Koliyannavar, caste Lingayat, age about 60, occupation agriculture of Nagnur Taluka Navalgund.

Vs.

Defts.1. The Provincial Government of Bombay.

2. Adiveppa Shiddangouda Patil, caste Lingayat, occupatio Pleader, age about 40 of Dharwar.

3. Venkatesn alias Anripad Dattatraya Sabnis, caste Brahmin, age about 20, occupation agriculture of Amargol present residence Hubli.

4. Dattatraya Bhimarao Sabnis, age about 50, occupation ~~Em~~ and residence Do.

Claim Rs.

The plaintiff above named begs to state as under:-

1. Description of the properties.

2. ~~Land~~ Government land ~~situate~~ R.S.No.24 acre 23-27 As 47

Assessed at Rs.4000/-.

The above mentioned land formerly belonged to deft No.4, and was in his wahiwat. Deft No.4 was a forest contractor. He was addicted to vice and had taken loan for 'Avyavaharika' purposes, and used to sqander family property. At that time deft No.3 son of deft No.4 was a minor. In view of the unfortunate conditions created by deft No.4, one Shankar Ramchandra Kulkarni maternal uncle of deft No.3, filed Spl. Suit No.47 of 1925 in the F.C.Court, Dharwar, for ~~partion~~ partition and accounts. Although ~~t~~ deft No.3 was entitled to half of the share in the entire properties, ~~the~~ he was ~~only~~ given only one house and the above mentioned suit land and the suit was compromised. By ~~th~~ virtue of this compromise decree, deft No.3 became the full owner of this land and he is making wahivat of the same. The name of deft No.3 has beer entered in the record of rights.

3. In the meanwhile i.e. in 1930, deft No.4 had to pay

a sum of Rs.4000/- to the Government in respect of the forest contract. At that time the name of deft No.3 was had been entered in the record of rights as owner of the suit land. Even though the deft No.3 was had become owner of the suit land in pursuance of the compromise decree, and deft No.4 had absolutely no right to or title to it, the Collector of Dharwar, or the Mamlatdar, Taluka Navalgund, inserted the name of deft No.4, in the place of deft No.3 and his guardian grand-father Lingo Annaji Yajaman, in the records of rights, which is quite illegal and opposed to law. It appears that this was done with an ulterior motive. Even if the name of deft No.4 stands in the record of rights, which is obviously illegal and, the rights of deft No.3 cannot be extinguished and he is the owner thereof. The Collector of Dharwar got a mortgage-deed executed from deft No.4 and the grand-father of deft No.3 and some others, after the entry of the suit land in the name of deft No.4, in respect of the forest dues of Rs.3207-1-0 as also with regard to the court costs of Rs.345-3-0 i.e. Rs.3552-9-0 payable to Covernment. As a matter of fact, the land belonging to deft 3 is not liable for mortgage for the amount payable by deft No.4. Moreover, deft No.3 is in no way liable for the court costs and liabilities of deft No.4 and others. Hence the mortgage-deed in question is null and void as against this deft. The deft No.1 is illegally making wahivat of the suit property.

5. The deft No.1 who is illegally making wahivat of the suit property from the date of the mortgage, and is estopped from bringing a suit in terms of the mortgage-deed for the recovery of the mortgage amount, had brought a suit against deft No.3 and others in L.C.Suit No.189 of 1940 of F.C.Court, Dharwar . . Deft No.1 had no cause at all to bring this suit. As the said suit was untenable, the decree in respect of this suit is illegal and null and void as against deft No.3 and is, therefore, not binding on him.

6. Deft No.4 had borrowed some money for his immoral and illegal habits from one Rajaramsa Hanamantasa Rajolli of Gadag, The said Rajaramsa filed a suit against deft No.4 in L.C.Suit No.92 of 1926 of Gadag court. At that time deft No.4 was residing at Navalgund and maintaining himself by agriculture. Still -

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However, Rajaramsa filed a suit deliberately in the court of the second Class Sub-Judge, Gadag, instead of in the Dharwar court and obtained an illegal, collusive and ex-parte decree. The said Rajaramsa brought the properties of deft No.4 to sale in execution of this decree in L.D.No.854 of 1926 of Gadag court. As nobody came forward to bid in the auction sale, the darkhast was disposed of. Rajaramsa bought the properties of deft No.3 to sale in execution of the decre obtained by him in L.D.No.750 of 1935 of Dharwar court with a view to take undue advantage of the fact that deft No.4's name had been entered illegally in the record of rights, as stated in paragraph 3 above. The said Rajaramsa purchased the properties himself in the auction sale for Rs.1000/- on 9-12-1937. The submission of the plff is that Rajaramsa has no right or interest in the suit property by virture of the auction purchase. Even if it is taken for granted that the decree obtained by Rajaramsa is legal and valid, the properties of deft No.3 are not legally liable for the debts of deft No.4. The rights and interests of deft No.3, therefore, cannot be extinguished by such unauthorised and illegal sale.

7. Deft No.1 was making illegal wahivat of the suit property at the time of auction-purchase of Rajaramsa. After the purchase of the suit property in the auction sale it had not actually come into the possession of the auction-purchaser. The sale itself was ab-initio illegal and void. When such were the state of things, deft No.2 purchased the property in question from Vishwanathsa and Rajaramsa the sons of Rajaramsa after his death, under a bogus sale-deed on 8-1-1940 for a consideration of Rs.600/-. Even supposing that the sale-deed is legal, deft No.2 cannot have any subsisting right or title in the suit property. All the above mentioned transactions have been taken place during the minority of deft No.3. For the reasons stated above deft No.3 is the owner of the suit property. Deft No.2 has taken the suit land on lease from deft No.1 for 1943-44. The said also is not binding on the plaintiff and deft No.3.

8. Deft No.3 on his attaining majority has sold the suit property on 30-7-1943 to the plaintiff for Rs.4000/- and has passed a registered sale-deed in his favour. From that date plff has become the owner of the suit land. By virtue of the sale-deed all the rights and interests vest in the plaintiff. Deft No.1 did not deliver possession of the suit property to the plaintiff amicably. The suit has been filed for obtaining a declaration that the possessory-mortgage deed is illegal and void and that the auction-purchase of deft No.2 is unlawful and that deft No.2 has no right or title in the suit property and for possession of the same.

9. Defts Nos.3-4 have been impleaded in the suit so that they may not have any objections lateron

10. Cause of action for this suit accrued in the month of September 1943 when possession of the suit property was demanded after the purchase of the same by the plaintiff.

11. Plaintiff has dully served a notice by registered post on deft 1 on 20-9-1943 as required by Section 80 of the Civ.P.C. and after the expiry of two months therefrom this suit has been filed.

12. Valuation of the suit:-

As the suit is for a declaration that the deft No.2 is not the owner of the suit property and for possession of the same, it is valued at Rs.200/-. As the suit land is assessed at Rs.47, 7½ times of this comes to Rs.552-8-0 and court fee stamp is paid on this amount. For the jurisdiction the valuation of the property is Rs.4000/-.

13. The plff and the defts reside within the jurisdiction of this court, this court has jurisdiction to try the suit.

14. Plff's prayer:-

As the possessory-mortgage deed obtained by deft No.1 is illegal, it is not binding on the plff. Plff is the owner of the suit property and deft No.1 is illegally making wahivat of the same, possession of it should be delivered to the plff from deft No.1. In case there is standing crops, possession should be ordered to be given along with the crops.

) As the sale-deed passed in favour of deft No.2 is illegal and a bogus one, it should be declared that deft No.2 is is not . -

entitled to the suit land and that the sale-deed in question is not binding on the plff. 33

(c) Plff is entitled to mesne profits from deft No.2 from the date of suit till delivery of possession of the suit property.

(d) Court costs and other equitable reliefs as the court may deem fit and proper should be awarded.

(e) Permission should be given to amend the plaint, if necessary.

23-12-1943.

Sd/ G.R.Nalwadi.
Pleader.

L.D. 21
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This relates to Dharwar C.S.No.503 of 1943.

2. In 1925 proceedings were pending for recovery of forest dues from defendant No.4 by sale of his property. Defendant No.3 who is son of defendant No.4 was then a minor, but a suit was filed on behalf of defendant No.3 through a [relative] next friend and there was a compromise partition decree allotting the suit property to defendant No.3. Government was no party to this decree and it was clearly fraudulent and collusive. Defendant No.4 himself started litigation against Government to avoid his liability for the dues, but did not succeed. Finally suit No.113 of 1928 was filed on behalf of defendant No.3. who was still a minor, claiming exclusive title to the suit property on the strength of the partition decree. When Government contested the suit, it was withdrawn in 1929. On 3rd April 1930 defendant No.4 and the guardian of defendant No.3 for himself and on behalf of defendant No.3 jointly executed a possessory mortgage in favour of Government.

3. In 1940 Government filed a suit to enforce this mortgage. On 27-2-1943 a decree was passed under section 15B of the Deccan Agriculturists Relief Act and the decree continued the Government in possession. Defendant No.3, now a major is party to the decree.

4. On 30th July 1943 defendant No.3 executed a sale-deed in favour of plaintiff, who brings the present suit for a declaration that the mortgage was void and illegal and for possession of the mortgaged property.

5. The suit is res judicata by reason of the decree in the mortgage suit and the contentions about the mortgage also are untenable and can be defended on the merits.

6. Sanction may be accorded to the defence of the suit on the lines of the appended brief. A revised draft written statement is also put up.

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In the Court of the First Class Sub-Judge, at Dharwar.

Civil Suit No. 503 of 1943. 39 37

Gulappa Kallappa Holiyannavar. ..... Plaintiff.

Vs.

1. The Provincial Government of Bombay.
2. Adiveppa Shiddangouda Patil.
3. Venkatesh alias Shripad Dattatraya Sabnis.
4. Dattatraya Bhimarao Sabnis. ..... Defendants.

Written statement of the defendant 1 abovenamed is as follows :-

1. The plaintiff's claim is not true and is denied.

2. The suit is barred by res judicata on account of the decree in the Mortgage Suit No. 189 of 1940.

3. With regard to paragraph 2 of the plaint, it is denied that defendant No. 4 was addicted to vice, had taken loans for avyavaharika purposes and used to squander family property. The partition Suit No. 47 of 1925 was a fraudulent and collusive one and was intended to defeat and delay the claims of Government against defendant No. 4. There was no intention to separate. The compromise partition decree is void and is not binding on the defendant under section 53 of the Transfer of Property Act. It is denied that defendant No. 3 acquired exclusive ownership in any property on account of the said decree or was doing wahiwat of the same as alleged.

4. Defendant No. 4 filed Suit No. 17 of 1925 against Government in order to avoid his liability for the forest dues and obtained an interim stay of the sale proceedings for recovery of the said dues. Later the suit was withdrawn with liberty to file a fresh suit, but when the sale proceedings were revised, a fresh suit, being Suit No. 149 of ~~192~~ 1927 was filed, but the same was dismissed.

5. Thereupon a suit was filed, being Suit No. 113 of 1928, on behalf of defendant No. 3 claiming exclusive

...nership in the suit property and for an injunction restraining Government from selling it. The Government having contended that the compromise partition decree was fraudulent and collusive and not binding on it, the suit was withdrawn. Plaintiff and defendant No. 3 are thereby both precluded from setting up the partition decree again and thus suit is not maintainable.

6. The allegation that the amendment of the entry in Record of Rights was made with an ulterior motive is denied. The entry was corrected as there had been no partition in the family and defendant No. 4 was in actual possession. The entry in the name of defendant No. 3 ~~had been got~~ was caused to be made fraudulently by defendant No. 4 and Lingo Annaji and it conferred no rights on defendant No. 3.

7. The Collector of Dharwar was approached by defendant No. 4, Lingo Annaji and Shankar Ramchandra for an amicable settlement by way of mortgage and it was thereupon that the mortgage of 3rd April 1930 was executed. There was no pressure of any kind on the part of the Collector as is suggested in the plaintiff's statement in the plaint that 'the Collector of Dharwar got a mortgage deed executed by defendant No. 4' etc. The mortgagors of their own accord passed the mortgage in order to save the property from the sale proceedings then pending.

8. The plaintiff's contention that defendant No. 3 was not liable for the dues payable to Government is contrary to law and is denied. The mortgage was legal and valid and was binding on the defendant No. 3 and on the plaintiff who claims under him.

9. Plaintiff's contentions in paragraph 5 of the plaint that the Suit No. 189 of 1940 was untenable are misconceived and are denied. Any contentions respecting the maintainability of the suit should have been made in

the suit and cannot be made now. Defendant 3 was a party the suit and the decree is binding both on him and on plaintiff who alleges to be a purchaser from him after the decree.

10. This defendant is not concerned with the validity of the title acquired by defendant No. 2. The mortgage decree obtained by this defendant is binding on defendant No. 2. The allegations in plaint paragraphs 6 and 7 in respect of defendant No. 2's title are not admitted.

11. The sale deed alleged to have been executed by defendant No. 3 in favour of plaintiff on 30th July 1943 is not admitted. According to this defendant, it is a collusive and colourable transaction and plaintiff obtained no rights by it.

12. Plaintiff's several allegations and contentions in the plaint are wrong and untenable. Plaintiff is not entitled to any relief and the suit should be dismissed with a separate set of costs in favour of this defendant.

District Government Pleader, Dharwar.

I, District Government Pleader, Dharwar, do hereby declare that what is stated in paragraphs 1 to 12 above is true according to the information received and believed to be true. This verification is made at on the day of 1944.

District Government Pleader, Dharwar.

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Suits

Dharwar.

For a declaration that the mortgage is void and illegal and for possession of the mortgaged property.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5198.

Bombay Castle, 22nd July 1944.

Letter from the Collector of Dharwar, No. L.A.W. 165, dated the 8th June 1944—

IN THE COURT OF THE FIRST CLASS SUBORDINATE JUDGE, DHARWAR.

Civil Suit No. 503 of 1943.

Gulappa Kallappa Holiyannavar .. Plaintiff;

versus

The Province of Bombay .. Defendant.

Claim—Rs. 4,000.

Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

Endorsement by the Commissioner, Southern Division, No. L.S.T. 311, dated the 16th June 1944—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Dharwar, No. 5197, dated the 22nd July 1944—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

original Pimoos :

P. N. MOOS,
Secretary to Government.

G. R., No. 5198, L. D., dated the 22nd July 1944.

Issued
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To

* The Revenue Department,
* The Commissioner, Southern Divisic
* The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1944.

Copy forwarded for information and guidance to

Submitted after issue
File in a new suit file

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DHARWAR CIVIL SUIT NO. 503 OF 1943.

Chronological Statement of Facts.

Plaintiff sues for possession of the suit property from Government (defendant No. 1), and for a declaration that the sale-deed of the property obtained by defendant No. 2 from third parties is not binding on him. The suit property is Revision Survey No. 24 of village Amergol, taluka Navalgund.

2. Defendant No. 4 was the transferee of a forest contract and became a defaulter. On 7th November 1925 the Mamlatdar, Navalgund, was asked to take steps to recover the forest dues by sale of the right, title and interest of defendant No. 4 in his lands in the said Taluka. A proclamation of sale in respect of Survey No. 24 was issued on 12th November 1925.

3. Defendant No. 3 is son of defendant No. 4 and was then a minor. A suit, being Special Suit No. 47 of 1925, for partition of the joint family properties was filed on behalf of the minor by his next friend and maternal uncle Shankar Ramchandra. There was a consent decree, and Survey No. 24 was allotted to the share of the minor. Government was not a party to this suit.

4. Defendant No. 4 himself filed Suit No. 17 of 1925 against Government in order to avoid his liability for the forest dues and obtained an interim stay of the sale proceedings. On 10th September 1926 he withdrew the suit with liberty to file a fresh suit on the same cause of action.

5. The sale proceedings were revived and sale fixed on 9th April 1927, but before this date defendant No. 4 filed Suit No. 149 of 1927 similar to his previous suit and obtained a stay order. The suit was dismissed on 7th December 1927.

6. The sale was fixed again on 27th April 1928, but before that on 26th March 1928 a suit was filed against Government by defendant No. 3 and by Rangubai mother of defendant No. 3 and wife of defendant No. 4 for a declaration that on account of the partition decree aforesaid the lands were of their ownership and for an injunction restraining Government from selling them. Government contended that the partition decree was collusive and fraudulent and not binding upon itself. On 19th February 1929 the suit was withdrawn.

7. Before putting up the lands to sale again it was found that Survey No. 24 stood in the name of defendant No. 3 and his mother Rangubai as occupants in the Record of Rights. As defendant No. 4 was in actual possession, the entry was changed by the Mamlatdar so as to show defendant No. 4 as the occupant. Sale was fixed again on 13th May 1929, but there were no bidders.

8. The Collector was approached for an amicable settlement by Lingo Annaji—natural father of defendant No. 4 and grandfather of defendant No. 3. On 3rd April 1930 possessory mortgage was executed in favour of the Secretary of State by (1) Lingo Annaji, (2) defendant No. 4, (3) Shankar Ramchandra, (4) Gangubai wife of Shankar Ramchandra, (5) Rangubai wife of defendant No. 4 and (6) defendant No. 3 by his guardian Lingo Annaji.

9. One Rājaramse in execution of a decree against defendant No. 4 purchased Survey No. 24 on 9th December 1937. On 8th January 1940 his sons sold the land to defendant No. 2. None of these persons secured possession from the Government.

10. Government filed Suit No. 189 of 1940 to enforce the mortgage of 3rd April 1930. All the mortgagors, including the present defendant No. 3, and defendant No. 2 were among the defendants to the mortgage suit. The decree passed on 27th February 1943 shows the present defendant No. 3 as 19 years old and that he had been represented by two pleaders. The decree declared the amount due and directed its payment by instalments under section No. 15B of the Deccan Agriculturists' Relief Act. Government was to continue in possession.

11. On 30th July 1943 defendant No. 3 executed a sale-deed of Survey No. 24 in favour of the present plaintiff.

12. On 20th September 1943 plaintiff gave notice of suit and filed the present suit on 23rd December 1943.

Grounds of Defence.

1. *Resjudicata.*—Plaintiff claims under defendant No. 3 from whom he is a purchaser after the mortgage decree. Defendant No. 3 was a party to that decree. Under section 47 of the Civil Procedure Code plaintiff becomes his representative and is thus bound by the decree—see Mulla's Civil Procedure Code, 11th Edition, page 186. The decree continues the mortgagee in possession under section 15B of the Deccan Agriculturists' Relief Act. Therefore, Government's right to possession under the decree cannot be questioned unless the decree is set aside. This suit is therefore not maintainable. All that the plaintiff has to contend on this point is thus stated in paragraph 5 of the plaint: "Defendant No. 1 had no cause at all to bring the suit. As the suit was untenable the decree is illegal." This argument is misconceived. If there were any grounds why the mortgage suit was not tenable, those grounds should have been urged in the suit itself. They cannot be urged after a decree has been passed in the suit. The present suit is clearly *res judicata.*

2. *Merits.*—Plaintiff contends that the suit property is of his exclusive ownership because of the compromise decree in the partition suit and that defendant 4's liability for the forest dues and Court costs could not have been made legal consideration for the mortgage executed on behalf of defendant No. 3. Both these contentions should be denied.

3. In regard to the first contention, Government was not a party to the partition decree and consequently is not bound by it. Plaintiff therefore has to prove the partition in order to establish exclusive title to the suit property. Next, under the Hindu Law, in order to establish partition it is necessary to prove a clear intention to separate. A consent decree is not conclusive evidence of the severance of status: See Mulla's Hindu Law, 9th Edition, pages 393 and 397, Chokalingam *v.* Muthu Kuruppan I.L.R. 1938, Mad. 1019 and Joala Prasad *v.* Mst. Chanderjot 17 Pat. 430. There are enough circumstances in this case to show that the partition suit was not really inspired by an intention to separate and did not in fact bring about any separation. So the partition cannot be held effective. In the second place it should be contended that the alleged partition was a fraudulent transaction intended to defeat or delay the claims of Government, and that under section 53 of the Transfer of Property Act it is not binding on Government. This defence was raised by Government in defendant No. 3's suit in 1928. In the third place, the 1928 suit was withdrawn, and unless it was withdrawn with liberty to file a fresh suit on the same cause of action, the defendant No. 3 and the plaintiff would both be equally precluded from maintaining the present suit. The District Government Pleader should ascertain the fact whether any liberty as aforesaid was granted. The Collector's report is not clear on this point.

4. Even assuming that there was a genuine and valid partition, the plaintiff's second contention will yet be found to be without substance. He contends that defendant No. 3 derived no benefit under the mortgage, that defendant No. 3's property was mortgaged for a liability of defendant No. 4. In the first place this contention ignores the principle of contract—see definition of consideration in section 2 (*d*) of the Indian Contract Act—that it is not necessary in order that the contract should be valid, that its benefit should go to the promisor himself. The only requirement is that something should have been done, forborne, or promised at the request of the promisor. In the second place under the Hindu Law the son is liable even after partition for a debt contracted by the father before partition: See Mulla's Hindu Law, 9th Edition, page 337. Therefore the contention that defendant No. 3 was not liable is not correct. The mortgage was binding on defendant No. 3.

5. For all these reasons it should be contended that suit fails and ought to be dismissed.

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Copy was applied for in person on the 21st Twenty rirst April 1945

X
Clerk of the Court.

It was ready for delivery on the 1st May 1945

Clerk of the Court.

It was delivered in person on 7th seventh June 1945

Clerk of the Court.

Received on 2-12-43.
Registered on 18-12-43.
Decided on 18-4-45.
Duration 1 year, 4 months and 16 days.

IN the Court of the Subordinate Judge, I Class at Dharwar.
L.C.Civil Suit No.503 of 43. Ex.121.

Pleaders Messrs Nalwadi & Holeyannavar & Tamkhed

1. Gulappa Kallappa Holeyannavar of Nagnur Taluka Navalgund Lingayat, age 60, Agri. .. .. Plaintiff.

Against

Mr. Malapur 1. The Provincial Government of Bombay.

R.B.B.L.Patil 2. ADiveppa Shiddangouda Patil of Dhatwar, Lingayat, age40,pleader.

3. Venkatesh Alias Shripad Dattatraya Sabnis of Amargol now at Hubli, Brahmin, age 20, Agri.

Mr M.S.Patil 4. Dattatraya Bhimarao Sabnis of do. BRahmin, age 50, Agri.
... Defendants.

Claim Rs.552/- 8as. Valuation Rs.4200/-.

The plaintiff sues to recover possession of the plaint land from the defendant No.1 to obtain a declaration ~~of the~~ that the defendant No.2 has no manner of rights over the plaint land and to recover costs and ~~mesne~~ mesne profits from the defendants 1 and 2

(1). Plaintiff alleges in the plaint that the suit land i.e. R.S. No.. 24 of Amargol in Navalgund Taluka, originally belonged to the ~~defendant~~ defendant No.4 that he was doing forest cotracts but was addicted to vices that he was gambling in ~~the~~ cards and spending money on women, that he was incurring debts for illegal and immoral purposes, that the defendant No.3 was deft. No. ~~2~~ 2 4's son, that he was then a minor, that in order to protect his interest, one Shankar Ramachandra Kulkarni who was his maternal uncle filed special C.S.No. 47 of 1925 in this very Court for partition and ~~sepa~~ separate possession in his share in the ancestral family property, that although the deft. No.3 was entitled

to a half share in the family property, he was allotted the suit land and a house for his share by the decree in the said suit which was passed in terms of a compromise between the parties, that since then the suit land was in the possession of the defendant No. 3 and his name was also entered in the village records as owner and Kabjedar; that the plaintiff now learns that about the year 1930 the defendant No. 4 was indebted to the Government in the sum of Rs. 3207-1-0 on account of certain forst contracts, that inspite of the fact that the suit land belonged to the defendant No. 3 and was in his possession and enjoyment, the Revenue Officer ordered, illegally and high handedly to delete the name of the defendant No. 3 and to enter the name of the defendant No. as the owner and Kabjedar of the plaint land in the village records, that this action on the part of the Revenue Officers did not in any way affect the right of the defendant No. 3, that on 3-4-1930 the Collector of Dharwar took a possessory mortgage bond of the suit and other lands from the defendant No. 4 and from the mother and grand father of the defendant No. 3 acting as his guardian and from others for Rs. 3552-9-0 which was then due to the Government from the defendant No. 4 including costs of certain litigation, that he took possession of the property mortgaged including the plaint land and was still in possession, that the defendant No. 3 was in no way bound to pay off his father's debts which were tainted with illegality and immorality and that the possession of the defendant No. 1 - the Provincial Government of Bombay was illegal and not binding upon the plaintiff who has purchased the suit land from the defendant No. 3 for Rs. 4000/- by sale deed dated 30-7-1943 after the latter attained majority; that the defendant No. 1 had filed special civil suit No. 189 of 1940 on the said mortgage bond for the recovery of money alleged to be due under it, although no such suit was maintainable and obtained a decree against the defendants 2 to 4 and others, that in as much as the decree was a nullity it was not binding upon the defendant No. 3 and consequently upon the plaintiff.

(2). Plaintiff further alleges in the plaint that the defendant No. 4 had contracted some debts with one Rajaramsa

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Hanamantasa Rajolli of Gadag for immoral purposes, that the latter had obtained a decree in L.C. suit No. 92 of 1926, on the file of the Gadag Court against the defendant No. 4, that he gave L.D.No. 854 of 1926 in the said Court and got attached the lands belonging to the defendant No. 4 but that darkhast was disposed of for want of bids that afterwards he got the decree transferred to this Court and gave L.D.No. 750 of 1935, got attached the plaint land and another S.No. 313 + and brought them to sale subject to the mortgage in favour of the defendant No. 1 and himself purchased them for Rs. 1000/- on 9-12-1937, that his son has purported to transfer the auction purchaser's right to the defendant No. 2 for Rs 600 by sale dee dated 8-1-1940, that the defendant No. 4 had no saleable interest in the plaint land at the date of the auction sale. That as a matter of fact, it belonged to the defendant No. 3, that as against his purchase of the land from the defendant No. 3 the defendant No. 2's purchase at the auction sale was of no avail, that he has superior rights to the land that the defendant No. 2, that notice has been given to the defendant No. 1 under section 80 of the Civil Procedure Code and that therefore, he has filed the suit to obtain the reliefs as mentioned above against the defendants 1 and 2, that defendants 3 and 4 have been impleaded to the suit so that they should not have any cause for complaint afterwards.

(3). The defendant No. 1 - the Provincial Government of Bombay in its written statement at Ex. 34 contends that the decision in special suit No. 189 of 1940 works as Res Judicata, and that the plaintiff was debarred from challenging it, that it was not a fact that the defendant No. 4 was addicted to vices and that the debts incurred by him were tainted with immorality or illegality and so not binding upon the defendant No. 3, that the partition suit No. 47 of 1925 and the compromise decree passed therein were a collusive and fraudulent affair intended to defeat and delay the creditors of the defendant No. 4 within the meaning of section 53 of the T.P.Act, that it was not a fact that the defendant No. 3 acquired exclusive ownership in any family property on account of the said decree and that he was making vahivat of the suit or any other property independently of his father, that defendant No. 4 had filed L.C. suit No. 17 of 1925 against the Government to avoid his liability to the Government for

the forest dues and in that suit he obtained an interim stay of the sale proceedings which were then pending for the recovery of the said dues, that the said suit was withdrawn with liberty to bring a fresh suit but that when the sale proceedings were revived aft a fresh suit, being L.C. suit No. 149 of 1927 was filed but the same was dismissed, that thereupon another suit was filed - L.C. suit No. 113 of 1928 - on behalf of the defendant No. 3 claiming exclusive ownership of the suit and another property and for a permanent injunction restraining the Government from selling the same. that the Government having contended in the said suit, that the compromise decree for partition in suit No. 47 of 1925 was collusive and fraudulent and not binding upon it, the suit was withdrawn unconditionally, that the defendant No. 3 and the plaintiff are now precluded from setting up the partition decree as conferring an exclusive title upon the defendant No. 3 over the suit land that the allegation in the plaint that the entry in the record of rights was corrected with an ulterior motive by the revenue authorities was not true, that as a matter of fact no partition had taken place between the defendants Nos. 3 and 4, that the former was not in possession of any land, that the entry of his name was got made by the defendant No. 4 and Lingo Annaji fraudulently and that that fact could not confer any rights on the defendant No. 3, that the Collector of Dharwar was approached by the defendant No. 4, Lingo Annaji and Shankar Ramachandra for an amicable settlement of the Government's claim, that the Collector acceded to their request and took the possessory mortgage bond that no pressure was brought to bear upon any body and that the suggestions made in the plaint to that effect were entirely false and groundless, that the debts of the defendant No. 4 were binding upon the defendant No. 3, that the mortgage bond was also binding, that the decree passed in special suit No. 189 of 1940 was perfectly legal and valid, that any contentions regarding the invalidity of the mortgage and the maintainability of the suit should have been made in that suit and not in this, that the sale deed obtained by the plaintiff was a collusive and a colourable transaction that the plaintiff has obtained no rights over the plaint land under the same, that the plaintiff was not entitled to any reliefs as against the defendant No. 1, that the Government was not concerned with the legality or validity of the title obtained by the defendant No. 2, that the mortgage decree in L.C. No. 189 of 1940 was binding upon him as he was a party to that suit, that the suit should

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be dismissed and Government's costs awarded.

(4). Defendant No. 2 in his W. statement Ex. 35 contends that the plaint land together with some other property originally belonged to one Venkaji Hanamant Sabnis, that after his death one Hanamant Ishvar Kulkarni - Venkaji's son's (Bheemarao), daughters (Jeevva) adopted son became heir to the estate of the said Venkaji that the defendant No. 4 claiming to be the adopted son of Bhimaji usurped the property of Venkaji, that one Gangabai-kom Ganeshbhat who was Venkaji's sister's daughter had filed L.C. suit No. 472 of 1914 claiming Venkaji's property as his heir, that in that suit, it was held by the Trial Court that defendant No. 4's adoption had not taken place and even if it had taken place, it was invalid, that the Defendant No. 4 and the said Gangabai had preferred appeals Nos. 56 and 67 of 1919 to the High Court where it was held that Gangabai was not the heir of the deceased Venkaji but Hanamnt Ishvar Kulkarni that defendant No. 4's adoption was not valid and that Hanamant was entitled to the estate of Venkaji. Accordingly both Gangabai and the defendant No. 4 lost that litigation but as the rightful owner - Hanamant Ishvar Kulkarni - took no steps at the proper time to recover possession of Venkaji's estate from the defendant no. 4, the latter became owner thereof by adverse possession, that it was therefore defendant No. 4's self acquired property in which the defendant No. 3 had no share or interest. In other respects, his contentions are practically the same as those of the defendant No. 1. He characterizes the decree in the partition suit as a fraudulent, collusive and colourable transaction; he avers that it was not acted upon; he denies that the debts of the defendant No. 4 were tainted with immorality or illegality, he contends that Vishvanathasa has become owner of the plaint land by reason of his auction purchase; he states that he was a party to special C.S.No. 189 of 1940, that he has paid Rs. 1708-9-0 on 16-6-1944 towards the satisfaction of the said decree, that the Collector of Dharwar by his order, dated 17-6-1944 directed the delivery of possession of the plaint land and S.No. 313 to the plaintiff, that as a matter of fact possession was delivered to him on 21-6-1944, that the plaintiff was not a bona fide purchaser for value, that the suit was barred by Res Judicata, Lis pendens and estoppel, that it should

should be dismissed and his costs awarded.

(5). The defendants Nos. 3 and 4 and their W. statements Exs. 30 and 32 respectively completely support the plaintiff's allegations and claim. Their pleadings need not be summarised.

On the above pleadings, the following issues were framed at Ex. 43.

Issues.

1. Whether the transaction embodied in the plaintiff's sale deed, dated 30-7-1943 is a bogus and colourable transaction not intended to transfer ownership over the property comprised therein ?

2. If so; whether this suit is not maintainable ?

3. Whether this suit is barred by Res Judicata by reason of the decision in L.C. suit No. 189 of 1940 as contended by the defendants Nos. 1 and 2 ?

4. If not, is plaintiff at liberty to contend and does he prove that the debt due to the Forest Department by the defendant No. 4 and also the decree debt of Rajaramsa Hanamantasa Rajolli of Gadag were ' Avyavaharik ' debts as alleged in the plaint ?

(5) If not, was defendant No. 3 bound by the said debts ?

(6). Do defendants prove that the decree in special C.S.No. 47 of 1925 was fraudulent and collusive and that it had not the effect of breaking the joint family status between the defendants 3 and 4 ?

(7). Does defendant No. 2 prove that the plaint property was the separate as self acquired property of the defendant No. 4 as contended in his W. statement ?

(8). In view of the fact that L.C. suit No. 113 of 1923 filed by the Defendant No. 3's grand father Lingo Annaji Yejaman, on behalf of the defendant No. 3 and his mother was withdrawn without reserving any right to bring a fresh suit on the same cause of action whether this suit is barred under order 23 rule 1 sub-clause 3 of the C.P.Code ?

(9). Whether the defendant No. 3 was bound by the mortgage bond, dated 3rd April 1930 on the name of the defendant No. 1 ?

(10). Whether the defendant No. 2 proves his sale deed, dated 8-1-1940 ?

(11). Whether he proves the sale of the plaint land in execution of

of decree in L.C. suit No. 92 of 1926 on the file of the Gadag Court and its purchase by his predecessor in title ?

12). whether the plaintiff proves that the said decree was illegal as also the sale held in execution of it and that the deft 3 was not bound by them ?

13). Whether plaintiff is entitled to the declaration and possession sought ?

14). What decree should be passed ?

Findings.

1. The plaintiff is not a bona fide purchaser; he certainly has not paid the full consideration recited in the sale deed; he has obtained the sale deed to enable him to file a suit for the possession of the plaint land and try if possible to get the land.

2. Suit maintainable.

3. Yes, as against the defendant No. 1.

4. Not proved.

5. Yes.

6. Yes.

7. Not proved.

8. Not barred.

9. Yes.

10. Yes.

11. Yes.

12. Not proved.

13. No.

14. As below.

Reasons.

(6). This suit and L.C. suit No. 487 of 1943 has been treated as companion suits and heard together. Evidence has been led and recorded in this suit. The documents produced in L.C. suit No. 487 of 1943 have been taken over and exhibited in this suit. All this has been done with the consent of the pleaders on both the sides (Vide Exs. 90 and 98).

At the commencement of the hearing of the suit, the plaintiff's pleader gave a purshis at Ex. 57 to the effect that the name of the defendant No. 1 - the Provincial Government of Bombay - should be deleted from the suit as it was deemed unnecessary to prosecute the suit against the Government (Vide Ex. 57). The Government pleader had no objection provided Government's costs were ordered to be paid Accordingly, the name of the defendant No. 1 has been ordered to be deleted. Further, the plaintiff's pleader gave another purshis to the effect that the plaintiff does not press his contentions that the debt of the defendant No. 4 due to the Government and Rajaramsa Rajolli of Gadag were tainted with immorality or illegality (Vide Ex.108) The two purshises given by the plaintiff's pleader dispose of some of the issues in the case viz. issues Nos. 3, 4, 5 and 9. The defts 3 and 4 were parties to L.C. suit No. 189 of 1940 filed by the Government upon the mortgage bond, dated 3rd April 1930. That suit ended in a decree in favour the Government (Vide Exs. 74 and 75 copies of Judgment and decree respectively in the said suit). Ex. 81 is the copy of the mortgage land, dated 3-4-1930. It is passed by Lingo Annaji (grand father of defendant No. 3) and Rangubai (mother of defendant No. 3) as guardiansof the defendant No. 3. Plaintiff claims through the defendant No. 3. He has obtained a sale deed regarding the suit land - S.No. 24 of Amargol - from the defendant No. 3(Vide Ex. 104). It is now too late for the defendant No. 3 or the plaintiff to contend that the mortgage bond Ex. 104 or the decree in L.C. suit No. 189 of 1940 were not binding upon them. The decision in the said suit works as Res Judicata in this suit and binds the plaintiff and the defendant No. 3. I record my finding in the affirmative on issue No. 3. The next two issues does not survive. Issue No. 9 must be answered in the affirmative in view of the purshis Ex. 57.

(7). Issues Nos. 10, 11 and 12 : Ex. 113 dated 8-1-1940 is the sale deed of the defendant No. 2. Vishvanathsa the executant of the sale deed admits its execution and consideration in his deposition at Ex. 118. Defendant No. 2 also proves is execution and consideration (Vide Ex. 112). Ex. 59 is the copy of the decree in L.C. suit No. 72 of 1926 on the file of the Gadag Court obtained by one Rajaramsa Hanamantsa Rajolli for Rs. 1795-1-6 against deft No. 4.

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He got the said decree transferred to this Court and here gave L.D. No. 750 of 1935 . He got attached R.S.Nos. 24 and 313 of Amargol which form the subject matter of the two suits with which we are concerned subject to the mortgage in favour of the Government. The lands were sold in the said darkhast and purchased by the decree-holder himself for Rs . 1000. Ex. 69 is the sale certificate granted to him. After the death of Rajaramsa, his son Vishvanathsa has sold the two lands in question to the defendant No. 2 for Rs . 100 by sale deed Ex. 113. The plaintiff had alleged in the plaint that the sale of the two lands in suit in execution of L.C.C.No. 92 of 1926 on the file of the Gadag Court was illegal for the reason that the debt was taken for illegal purposes. In as much as the plaintiff has given up his conten -tions regarding the illegal nature of the debts of the defendant No.4, issue No. 12 must be answered in the negative.

(8). I now take up issue No. 7: Defendant No. 4 is the natural son of one Lingo Annaji Yejaman Navalagund. The suit lands along with other properties originally belonged to one Venkaji Hanamant Sabnis. His son was one Bhimarao but he had predeceased his father. Bhimarao's widow was one Venkavva. He had a daughter by name Jivavva. Venkaji died in the year 1880 and Venkavva on the 26th December 1907. Defendant No. 4 as claiming to be the adopted son of Venkavva and Bhimarao. Both the factum and validity of his adoption was disputed by at least three claimants who claimed the property of Venkaji by inheritance. One of the claimants viz. Gangabai, who was Venkaji's sister's daughter filed L.C. suit No. 472 of 1914 in this Court for recovery of possession of Venkaji's property including the lands in those suits (Vide Ex. 76). The present defendant No. 4 was defendant No. 1 in that suit and one Hanamant who claimed to be Jivavva adopted son was defendant No. 2. One Gurunath Ramachandra - Venkaji's sister's grand son - was defendant No. 4 and another Nilakanth Keshav who was also the grand son of another sister of Venkaji was defendant No. 3. The pedgree is given on page 70 of volume 24 of the Bombay law Reporter. The Trial Court held the adoption of defendant No. 2 by Jivvavva proved; the adoption of defendant No. 1(i.e. the present defendant No. 4) by Venkavva neither proved nor valid; the will of Venkaji set up by defendant No. 1 not proved; plaintiff to be nearer heir to Venkaji than defendants Nos. 3, and 4, that the plaintiff

and the defendant No. 2 were equally removed from the last male holder and that therefore they were equally entitled to Venkaji's property. Accordingly a decree for partition was passed in favour of the plaintiff. Both the plaintiff and the defendant No. 1 preferred separate appeals to the High Court. In the High Court Justice Shah and Chief Justice Macleod came to the conclusion :- That the plaintiff Gangabai was the daughter of Venkaji's sister Kristavva; that defendant No. 2 was duly adopted by Jivavva: that the adoption of defendant No. 1 by Venkavva was not proved and that the plaintiff was in no way estopped from showing that it was not proved and that the will of Venkaji was not proved and Venkavva must be taken to have inherited the estate of her father in law according to the Hindu law as the widow of the nearest Gotraja Sapinda. As regards the validity of the deft 1's adoption Justice Shah observes as follows :- Strictly speaking, the question of the validity of the adoption of defendant No. 1 does not arise. But in view of the argument on the question, it seems to me desirable to decide that question. And in any case its invalidity if established could afford an additional ground for ignoring the adoption. The will of Venkaji not having been proved, no question of his consent to an adoption by Venkavva could arise, the only consent suggested being that contained in the will. According to the decision of this Court in Laxmibai Vs. Vishnu Vasudev (I.L.R. 29 Bom. 410). The consent of the father in law would be operative only during his life time. So the consent such as is contained in the will, even if proved, would not avail defendant No. 1. It is urged, however, that Venkavva by adopting defendant No. 1 did not divest any estate vested in a third person, that the adoption had only the effect of divesting the estate vested in her and that on that ground the adoption is valid. According to the decisions of this Court that is not conclusive test of the power to adopt. It may be that where the adoption has the effect of divesting any estate vested in a third person, it might not be valid, but it does not follow that where it has no such effect, the adoption is necessarily valid. That view has been accepted in Ramakrishna Vs. Shamrao (I.L.R. 26 Bom. 526). The ratio decidendi of this case has been approved by the Privy Council in Madana Mohana Deo Vs. Purushottam (20 Bom. L.R. 1041). It has been applied by this Court in Datto Govind Vs. Pandurang Vinayak

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(I.L.R 32 Bom. 499) especially in the case of a widow succeeding as a gotraja sapinda of the last male owner under the rule established by Lallubhai Vs. Mankurbhai (I.L.R. 2 Bom. 388) and approved by the Privy Council in Lalloobhai V. Cassibai, in consequence of the absence of nearer heirs. In the present case, the daughter-in-law succeded as a gotraja sapinda of the last male owner in the absence of any nearer heir. It is clear that Venkavva could not adopt to her husband so as to affect the devolution of the estate inherited by her as a gotraja sapinda .... I think therefore that the adoption of defendant No. 1 by Venkavva would not be valid. It folows from these findings that deft 1 has no title to the property in his own right ". (Vide Ex. 24 Bom. L.R. page 69, at pages 72 and 73). As between the plaintiff and the defendants 2, 3 and 4, their Lordships held that the defendant No. 2 was the preferential heir to the deceased Venkaji and in the result set aside the decree passed by the Lower Court and dismissed the plff's suit.

(9). The defendant No. 1- Dattatraya had raised a contention in his W. statement that he had settled with the defendants, 2 , 3 and 4 that plaintiff was not the heir of the deceased Venkaji and that he was entitled to retain the property as against the plaintiff. Defts 2 and 3 had denied the settlement alleged by the defendant No. 1 but defendant No. 4 had admitted it. As to this, Their Lordships observe as follows at page 74 :- ' I may mention here that we are not concern -ed in this suit with the effect of the settlement said to have been effected-by defendant No. 1 with defendants Nos. 3 and 4 and with defendant No. 2. Theirs rights inter se need not be considered here'. I give below the nature of the settlement which the defendant No. 1 had alleged as against the defendant No. 2 who was held by the High Court to be the nearest heir of the deceased Venkaji . Immediately after the death of Venkubai in 1908, Lingo Annaji Yejaman, natural father of Dattatraya presented a deed of adoption for registration, pur -porting to have been passed by Venkavva. Hanamant's natural father both Hanamant and Dattatraya were then minors - objected to the registration of the document, alleging it to be a forgery. Lingo Annaji, thereupon filed L.C. suit No. 771 of 1908 on behalf of Dattatraya against Hanamant for getting an order for the registration of the said deed of adoption. The dispute was referred to arbitration through the Court. The arbitrators held Dattatraya's adoption proved

gave two lands to Hanamant out of the thirteen and the rest to Dattatraya and ordered the deed of adoption to be registered. A decree was ultimately passed by the Court in terms of the award.

After the decision of the High Court in First appeal Nos. 56 and 67 of 1919. Hanamant filed L.C.S. No. 382 of 1923 against Dattatraya and others for possession of the rest of the property belonging to Venkaji which was in the possession of Dattatraya as per terms of the decree in S.No. 771 of 1908. His allegations in the plaint were that Lingo Annaji had obtained the decree in S.No. 771 of 1908 by practising fraud upon his natural father. That the alleged deed of adoption purporting to have been passed by Venkavva was a forged document, that Dattatraya's adoption was held not to have taken place and if taken place was invalid, by the High Court, that he has been held to be the nearest heir of Venkaji nd as such he was entitled to the latter's property. His suit was held to be barred by the law of limitation under article 90 read with section 18 of the Limitation Act by this Court and the decision was upheld by the High Court in First appeal No. 525 of 1927 (I have stated the above facts after perusing the judgments in L.C.S.No. 382 of 1923 and first appeal No. 525 of 1927 which I had called for from the records).

(10). This is how Dattatraya (defendant No. 4) came to own the property of Venkaji including the lands in these two suits. Now, the question for our consideration is whether under these circumstances, the said property was Dattatraya's separate or self acquired property or ancestral family property in the sense that his son got an interest therein by birth. It is no doubt true that the High Court came to the conclusion that Dattatraya's adoption had not, as a matter of fact taken place and that in any case it was illegal and invalid. But, the High Court dismissed the plaintiff's suit on the ground that she was not theheir of the deceased Venkaji . It was therefore not necessary for the High Court to record a finding upon the factum and validity of Dattatraya's adoption. That finding does not operate as Res judicata against Dattatraya. In A.I.R. 1944 Oudh 314, the facts were as follows:-

(11). In 1935, one Gaya Prasad and Shambhunath filed a suit that the partition decree of 1932 between Lal Behari and the other members of his family was collusive and fraudulent. The suit was decreed by the

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Trial Court. The High Court howevern allowed the appeal and dismissed the suit. The grounds of the decision was that the suit for declaration was not maintainable. In the judgment, the learned Judges expressed themselves rather strongly in regard to the partition decree. They expressed the view that no real partition had ever taken place between Lal Benari and other members of the family. They further found that the proceedings in the partition suit were sollusive. In a subsequent proceeding which went to the High Court, Their Lordships Bennett and Ghulam Hussain held :- " There can no doubt that the finding of this Court was unnecessary in view of the clear decision that the suit was not maintainable and a declaratory decree could not be granted. The ultimate decree was in favour of the applicant who had succeeded on the ~~fina~~ plea of non-maintainability of the suit and the adverse finding against her would not operate as Res judicata. The Privy Council ruling in Midnapur Zamindari Co. Ltd. V. Naresh Narayan Roy (48 Cal. 460) is more to the point. In that case, A sued B for possession of certain lands after the expiry of a lease granted by him to B & pleaded (1) an occupancy right and (2) That the suit was premature as he had a righ of renewal. The Trial Judge found that there was no occupancy right, but that the suit was premature and the suit was dismissed. A filed an appeal to the High Court. B. filed a cross objection to the finding against him, namely that he had no occupancy rights. The High Court affirmed the decree on the ground that the suit was premature and upon the cross objection affirmed the finding that B had no occupancy right. After some years A, after giving notice to B, again sued B for possession.B again pleaded an occupancy right. A contended that the finding of the High Court in the previous suit that B had no occupancy right was Res Judicata. Held by the Judicial Committee that the finding was not Res Judicata. The reason being that B having succeeded on the plea that the suit was premature., he had no occation to go further as to the finding against him (Vide Mulla's C.P.Code 1941 Edition page 82).

(12). It is in evidence that inspite of the High Court decision, Dattatraya continued to call himself as the adopted son of Bhimarao Sabnis. In all the suits of 1925, 27 and 28 which I shall presently refer to and in the mortgage bond of the year 1930 passed

in the name of the Secretary of State for India, Dattatraya has been described as the son of Bhimarao Sabnis and not of Lingo Annaji Yejaman Even in the suit filed by Rajaramsa Hanamantasa Rajolli against Dattatraya in 1926, the latter has been described as the son of Bhimarao Sabnis(Vide Ex. 59). Dattatraya is not therefore debarred from still maintaining that he was the validly adopted son of Bhimarao Sabnis. The point that is of importance is that Dattatraya entered into possession of Venkaji's property as the adopted son of Bhimarao. He held the said property throughout in that capacity. The question is whether he was at liberty to repudiate that capacity and claim to hold in a different capacity. There is a direct ruling on this point in Jogeshvar V. Pandurang (A.I.R. 1924 Nagpur 73). In that case, the facts were almost similar. One Jogeshvar Pant of Nagpur was sued by his elder son , Pandurang for partition of a third share in the property of the Joint Hindu family. Jogeshvar Pant was taken in ad ption by his mother's father Tukaram Bhat. The only defence to the claim was that the adoption was never made, and was invalid if it was made so that Jogeshvar Pant had been in wrongful possession of the whole property for over forty years and it must therefore be regarded as his self acquired property. The Trial Court allowed ¼th share to Pandurang as it was held that Jogeshvar's wife was also entitled to an equal share with the rest. The adoption of Jogeshvar by his maternal grand father was prima facie invalid under Hindu law amongst the regenerate classes. A custom abolishing the prohibition of the adoption of a daughter's son was no doubt successfully pleaded. Still, Their Lordships observed that it was not open to Jogeshvar Pant to repudiate the capacity in which he took possession of the estate of Tukarambhat. In para 6 of the judgment, it is observed :- ' There is no question of estoppel but there is a question of adverse possession of which one side c..., has been considered, and that not correctly. It seems to have been assumed that if Jogeshvar Pant's adoption could be proved to have been invalid, he must be regarded as having been in possession of all the property of Tukaram pant on his own account as a trespasser and not as the son of Tukarampant, from the date of the invalid adoption. But it is beyond question that he went into possession of that property as an adopted son of Tukarampant and held it in that capacity alone till after the institution of this suit ....." In para 7 the learned Judge goes on to say " In Dalton

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V. Fitygerald, cited by the Madras High Court in Apparao V. Ganapatrao, Lopes L.J. said ' If a man obtains possession of land claiming under a deed or will he cannot afterwards set up another title to the land against the will or deed. Though it did not operate to pass the land in question, and if ~~the~~ he maintains in possession till 12 years have elapsed and the title of the Testator's heir is extinguished, he cannot claim by possession an interest in the property different from that which he would taken if the property had passed by the will or deed'. Similarly, in this case Jogeshvar Pant cannot claim to have acquired merely by possession an interest in the property of Tukarampant different from that which he would have taken if the property had rightly passed to him as the son and heir of Tukarampant " Relying upon the ruling mentioned above, I hold that the plaint lands were ancestral family property in the hands of Dattatraya and that his son took an interest in it by birth. I record my finding in the negative upon this issue.

(13). I now come to the most important issue in the case viz. Issue No. 6. It appears that one Venkatesh Jivaji Mutalik of Badami had taken a contract for felling the trees in the forest some where in Haliyal Taluka in the year 1923. He had received an advance of Rs . 3000 from the Forest Department and he was to complete the work by the end of December 1923. He did not complete the work within the stipulated time. In June 1924, Dattatraya took the same contract in his name and got an advance of Rs . 2500. One Shankar Ramachandra Kulkarni who was his sister's husband stood surety for him. Dattatraya did not work himself. The Forest Department through the Revenue officers attached S.Nos. 24, 313 and 291/3 of Amargol for the recovery of the advance taken by Dattatraya. The latter's contention was that he was only a benamidar for Venkatesh Mutalik, that out of the sum of Rs . 2500 received by him from the Forest Department, he had paid back Rs . 2200 as the dues of the said Mutalik and that he was not in any way liable to the Government. As his lands were attached and put up for sale by the Revenue Authorities, he filed O.C. suit No. 17 of 1925 against the Secretary of State for India on 15-12-1925 in the District Court, Dharwar for a declaration that his contract was void and for an injunction restraining the Government from proceeding with the sale of his lands

(Vide Ex. 64). The sale was fixed to take place on 28-12-1925 and Dattatraya got it stayed by obtaining an interim injunction (Vide Ex. 71). But ultimately the plaint was rejected on 10-8-1926 under order VII rule 11(d) of the C.P.Code on the ground that the provisions of section 80 of the Code were not complied with (Vide Ex. 63). Two days after i.e. on 12-8-1926 a fresh suit was filed in the District Court relying upon the notice already given but the plaint was returned on 18-11-1926 for presentation to the First Class Court as in the meanwhile the First Class Courts were invested with jurisdiction to try suits to which Government was a party. The plaint was then presented to this Court on 29-3-1927 but it came to be dismissed on 7-12-1927 for plff's default (Vide Ex. 65). An interim order for stay of sale was applied for in this suit as well i.e. L.C. S.No. 149 of 1927 (Vide Ex. 72) but the said order was cancelled on 7-12-1927 as the suit itself was dismissed the very day for default.

(14). Now on 23-1-1925 i.e. long before Civil suit No. 17 of 1925 was filed in the District Court by Dattatraya, Shankar Ramachandra Kulkarni acting as the next friend of Venkatesh alias Shripad (Deft 3) had filed special C.S.No. 47 of 1925 against Dattatraya (Deft No. 4) for partition and separate possession of his one half share in the family property. Rangubai was impleaded to this suit as defendant No. 2. Venkatesh was aged 2-3 years at the date of the institution of the said suit. This suit ended in a compromise decree passed on 11-1-1926 (Vide Ex. 58). That very day another decree on an award was passed between Lingo Annaji Yejaman and Dattatraya Bhimarao Sabnis i.e. father and son (Vide Exs. 77 and 80) copy of the award decree in special C.S.No. 8 of 1926 and copy of the award respectively in the said suit). In the plaint in special C.S.No. 47 of 1925, it was alleged that the defendant No. 1 (Dattatraya) was addicted to vices, that he was wasting the family property, that he was not caring for his wife and son, that he was contracting Avyavaharik debts, and that it was not in the interest of the minor plaintiff to continue the joint family. Briefly stated, the terms of the compromise decree are as follows :-

(1). Dattatraya was to pay off whatever debts he had incurred since the year 1922 as they were bogus immoral and not for the necessity or for the benefit of the family.

(2). Dattatraya was given in adoption about 17 years before.

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Much litigation ensued about his adoption. Lingo Annaji had spent about Rs. 8000 for the said litigation. In part satisfaction of the said debt, Dattatraya has already sold R.S.No. 109 of Mudenoor and R.S.Nos. 113 and 291/1 of Amargol to the said Lingo Annaji on 1-5-1922 For the balance of Rs. 3000/-, he has already passed a mortgage bond for Rs. 3000 in the name of Lingo Annaji regarding R.S.Nos. 151, 158 and 161 of Belvanki. Besides Dattatraya has to pay Rs. 1100 to Shankar Ramachandra. These two debts are binding upon the plaintiff and the defendants 1 and 2 as well.

(3). Plaintiff is given R.S.No. 24 of Amargol for his share and also a house and open site situated in the said village. Defendant 1 (Dattatraya) is given R.S.No. 291/2 of Amargol and R.S.Nos. 151, 158 and 161 of Belvanki and defendant No. 2 (Rangubai) is given R.S.No. 131 of Amargol and an open site situated in that village.

(4). As the defendant No. 1 has been allotted a larger share of the family property, he is to pay off the two debts mentioned in clause-2 above.

(5). As the plaintiff is a minor and the defendant No. 2 is a woman Lingo Annaji should take possession of the property allotted to their respective shares and make vahivat of the said property on their behalf and get his name entered in the Revenue records as vahivatdar. Defendant No. 2 is to enjoy the usufruct of the land allotted to her share for her maintenance, till life and thereafter it should go to her sons in preference to the daughters (Vide Ex. 58).

The terms of the award decree in special C.S.No. 8 of 1926 are as follows :-

1. Lingo Annaji is to pay Rs. 1500 in cash to Dattatraya and in addition pay off the debt of Shankar Ramachandra Kulkarni to the tune of Rs. 1100 as per decree in L.C.S.No. 47 of 1925.

2. Dattatraya is to pass a sale deed in the name of Lingo Annaji regarding the three Belvanki lands and S.No. 291/2 of Amargol in satisfaction of the mortgage debt and in consideration of the payments to be made as per clause one above (Vide Ex. 77)

(15). It is an admitted fact that no provision was made in either of the two decrees for the payment of the debts of Dattatra-

Dattatraya due to the Forest Department and to Rajaramsa Hanamantasa Rajolli of Gadag. It is no doubt true that Dattatraya was disputing his liability to the Government and he had filed L.C.S.No. 17 of 1925 in the District Court on 15-12-1925 for a declaration of the invalidity of his contract and for an injunction restraining the Government from proceeding with the sale of his lands viz. R.S.Nos. 34, 113 and 291/d of Amargol (Vide Ex. 64). That suit was pending at the date of the compromise decree in special C.S.No. 47 of 1925 and the award decree in special S.No. 8 of 1926 i.e. on 11-1-1926. The debt due to Rajaramsa Rajolli was on khata balance . Dattatraya had settled the accounts on 21-1-1925 and acknowledged that a sum of Rs . 1518 was due by him on that day (Vide Ex. 59 copy of the decree in L.C. suit No. 92 of 1926) on the file of the Gadag Court). It is further admitted that by virtue of the two decrees, Dattatraya was left with no immoveable property by which he could have satisfied the debts due to the Government and to Rajaramsa Rajolli of Gadag. There is no evidence on the record to show that Dattatraya was, as a matter of fact, indebted to Shankar Ramachandra Kulkarni in any way. The sum of 1100 stated to be due to Shankar Ramachandra Kulkarni from Dattatraya does not appear to be real or genuine. It is said that Shankar Ramachandra had spent Rs . 500 or Rs . 600 in connection with the suit No. 382 of 1923 filed by Hanamant Ishvar and that he had incurred an expenditure of about Rs . 600 for the maintenance of Dattatraya's wife and son since the year 1922. It is to be noted that this Shankar Ramachandra had stood surety to Dattatraya in June 1924 for the due performance of the contract, which the latter entered into with the Forest Department. He was Dattatraya's sister's husband and was the next friend of Venkatesh in special C.S.No. 47 of 1925. In the plaint in the latter suit, he has made an allegation to the effect that since 1922, Dattatraya was neglecting his wife and son, was leading an immoral and a wayward life and was incurring debts quite unnecessarily. If that was a fact, it is not understood how in June 1924 he stood surety for Dattatraya for a large sum of money. In the absence of any evidence on the point and in the light of the circumstances of the case, I am not prepared to hold that Dattatraya was in any way indebted to Shankar Ramachandra. Further there is no satisfactory evidence to show that Lingo Annaji paid Rs . 1500 to Dattatraya as recited in the award decree in Special suit No. 8 of 1926. It is no doubt true that on 1-5-1922 Dattatraya had passed a sale deed for Rs . 5000 in the name of his father Lingo Annaji

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and a mortgage bond for Rs . 3000 comprising the three Belvanki lands. It is recited in the compromise decree in special C.S.No. 47 of 1925 that Lingo Annaji had spent a sum of Rs . 8000 of his own in connection with the litigation regarding Dattatraya's adoption and that it was for past payment of that amount that the latter had passed the sale deed for Rs . 5000/- and a mortgage bond for Rs . 3000. I very much doubt the truth of the statements made in the compromise decree on this point. In the first place there is no evidence to show that Lingo Annaji was in a position to spend . 8000 or any amount for the litigation of Dattaraya. In the second place I do not think that it was necessary to spend such a large amount. There was practically only one litigation and that was the suit filed by Gangabai in the year 1914. In the trial Court. Dattatraya was a defendant. The suit, no doubt went against him and he had to file an appeal to the High Court. Lingo Annaji had filed L.C. suit No. 771 of 1908 on behalf of Dattatraya. That was a suit for getting the deed of adoption registered. It ended in a decree in terms of an award. The expenses of the litigation in connection with Dattatraya's adoption till 1922 must not have exceeded Rs . 2000 to Rs . 2500/- at the most. In the third place Lingo Annaji was in possession of all the landed property of the adoptive family of Dattatraya since the year 1907-1908 at least. Till about the year 1920-1921. Dattatraya was then a minor. Lingo Annaji was making vahivat on his behalf. The lands were extensive. They measured nearly 175 acres assessed at Rs . 250. (Vide Ex. 76). The income of this landed property must not have been less than Rs . 1500 per year. Lingo Annaji could have met the expenses of the litigation out of the income of the said property and in all probability he must have done so. I am disposed to think that both the sale and mortgage in the name of Lingo Annaji were bogus and intended to create inpediments in the way of Hanamant Ishvar filing a suit and recovering possession of the property of Venkaji. The High Court decision in first appeals Nos. 56 and 67 of 1919 was given in the month of September 1921. The High Court held against both the factum and validity of Dattatraya's adoption. It however dismissed Gangabai's suit on the ground that she was not the heir of Venkaji. It held Hanamant to be the nearest heir of Venkaji but left the question of the alleged settlement between

him and Dattatraya undecided. A suit by Hanamant under the circumstances of the case was a certainty and it did come in the year 1923. Lingo Annaji who is said to have been a notorious litigant must have anticipated a suit from Hanamant and in his own way thought of putting obstables in the way of Hanamant taking a sale deed and a mortgage bond in his own name. Ex. 85, extract from the record of rights shows that Dattatraya had passed a mortgage bond for Rs. 1100 in the name of one Veerappa Andaneppa Manvi on 25-10-1924 comprising R.S.Nos. 24, 313 and 291/2 and also the three Belvanki lands. There is no reference to this mortgage debt, if the bond was genuine, either in the partition suit No. 47 of 1925 or in the decree on the award i.e. S.No. 8 of 1926. It is not known what became of this mortgage bond. The Government had impleaded the mortgagee Veerappa Andaneppa Manvi to L.C.S.No. 189 of 1940. He was defendant No. 7 but he remained absent and exparte (vide Exs. 74 and 75). If the mortgage was genuine the omission to make provision for the payment of the said debt in the suits Nos. 47 of 1925 and 8 of 1926 was initself fraudulent. If the bond was not genuine then it must have been brought into existence with fraudulent intentions i.e. to defeat and delay the creditors of Dattatraya.

(16). Venkatesh was a minor boy in the year 1925-26, aged 2 or 3 years. Partition was sought on the alleged ground that Dattatraya was creating immoral and illegal debts. The plaintiff have given up that contention in these suits. It is no doubt true that Dattatraya had incurred some debt with one Rajaramsa Rajolli of Gadag and made himself liable to the Government in connection with a forest contract. The mortgage bond passed by him in the name of Veerappa Manvi in 1924 was in all probability a bogus transaction. At least, in existence was completely ignored when L.C. suit No. 47 of 1925 was compromised and a decree in terms of the award was passed in special C.S.No. 8 of 1926. A partition cannot be said to be bona fide and may be said to have been made with intent to defraud creditors if it does not provide for the payment of the father's debts. If the terms of the compromise decree in L.C. suit No. 47 of 1925 and of the award decree in special C.S.No. 8 of 1926 are read together as they must, they have no doubt in the mind of any impartial person that the motive underlying the said terms was to defeat and delay the creditors of Dattatraya rather than effecting a genuine and bona fide partition between Dattatraya and his son. Partition under Hindu law

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is a severance of joint status, and as such it is a matter of individual volition. All that is necessary, therefore, to constitute a partition is a definite and unequivocal indication of his intention by a member of a joint family to separate himself from the family and enjoy his share in severalty' (Vide Mulla's Hindu law 12th Edition page 392). In this case one of the two members of the family was a minor boy. He was therefore not in a position to express any intention to separate. Dattatraya could not have really intended to separate from his son. So far as he was concerned, there was no necessity to have become separated from his minor son. The mere institution of a suit for partition by a minor co parcener through his next friend does not ip so fact affect a severance of joint status. Justice Vasudev observes as follows in Ransing V. Fakira, 1939 Bombay page 250, at page 262 :- The Court had to exercise its discretion to pass a decree for partition, only if it was for the benefit of the minor and that therefore until that decree was passed the minor's status was not altered. I feel no hesitation in holding that the mere filing of a plaint on behalf of a minor cannot ip so facto constitute a severance of status, for, it is in the discretion of the Court to grant a decree only if it is for the minor's benefit ".

(17). It is no doubt true that L.C.S.No. 47 of 1925 ended in a decree for partition but it was in terms of a compromise between the parties and not by virtue of a decision by the Court. A compromise decree has no more sanctity than an agreement between the parties. There is nothing on the record to show that the Court applied its mind to the terms of the compromise and came to the conclusion that it was for the benefit of the minor and so gave its sanction to it. I have shown above how the terms of the compromise read with the terms of the award were in fraud of the creditors of Dattatraya. Under the circumstances of the case, I am not prepared to hold that the partition was for the benefit of the minor boy. He was given only one survey number but that was already under attachment for the forest dues of Dattatraya. The real nature of the sale deed and the mortgage bond passed by Dattatraya in 1922 in the name of Lingo Annaji, his own natural father was not brought to the notice of the Court. They were taken to be real and genuine transactions because it suited the purposes of the parties. All the parties to both the suits viz. Shankar Ramachandra Kulkarni, Dattatraya, Lingo Annaji and Rangubai were colluding with each other. The dominent motive behind their actions

was to defeat and delay the creditors of Dattatraya. I am of the opinion that there was no intention to effect a severance of status between Dattatraya and his minor son and without such an intention, the bringing into existence of a formal deed of partition or even a collusive decree for partition, will not have that effect. In this case, there was special reason why a suit for partition was filed on behalf of the minor boy and why a decree in terms of a compromise was got passed. The dominent factor which determines the question as to whether there was a partition or not, is the intention of the parties to it that there shall be a an immediate separate or severance of interest. That was wanting in this case and under the circumstances of the case, I am not prepared to hold that a separation was effected between Dattatraya and his minor son in 1926.

(18). That, there was not that intention will be clear from the subsequent conduct of the parties L.C.S.No. 149 of 1927 was dismissed on 7-12-1927 (Vide Ex. 65). The interim injunction granted by the Court was vacated on the day the suit was dismissed (Vide Ex. 72). The Government, therefore proceeded with the sale of the lands which were already under attachment. Thereupon Lingo Annaji filed L.C.Suit No. 113 of 1928 on behalf of the minor Shripad and Rangubai for a declaration that the plaint lands viz. S.Nos. 24 and 313 belonged to the plaintiff and for an injunction restraining the Government from proceeding with the sale of the said lands. In support of the claim made in the plaint, he relied upon the compromise decree in L.C. suit No. 47 of 1925 (Vide Ex. 66). The Government contended in its W. statement that the decree in special suit No. 47 of 1925 mentioned in paragraph 2 of the plaint is for all purposes a collusive and fraudulent one, obtained with an intention to defeat and delay the claim of the Government which was not a party to it, though the land was attached before it was passed (Vide Ex. 115). Lingo Annaji had not the courage to prosecute the said suit and to prove the allegations made in the plaint. He withdrew it on 19-2-1929 unconditionally without reserving any right to file a fresh suit (Vide Ex. 66). There is another factor which goes to show that the compromise decree in special L.S. No. 47 of 1925 and the award decree in special suit No. 8 of 1926 were not intended to be acted upon. At the date of the said decrees i.e. on 11-1-1926 L.S.No. 17 of 1925 filed by Dattatraya against the Government was pending in the District Court. It was rejected on

10-8-1926 as stated above (Vide Ex. 64). Two days after Dattatraya filed another suit in the District Court to obtain similar reliefs as claimed in the earlier suit. The District Court returned the plaint for presentation to this Court on 18-11-1926 (Vide Ex. 65). On 1-4-1927 Dattatraya gave a verified application to this Court for an interim order for stay of the sale of the plaint lands (Vide Ex. 72). In this application he has solemnly affirmed that S.Nos. 24 and 313 belonged to him and that the Defendant Government was illegally selling them through its Revenue officers. By virtue of the compromise decree in special L.C.No. 47 of 1925 passed on 11-1-1926 Dattatraya had lost all interest in the said lands. How is it then that in April 1927 he still claimed them as belonging to himself. This must have been on the basis that the decree in special C.S.No. 47 of 1925 was a sham transaction not intended to be acted upon.

(19). Shankar Ramachandra who had stood surety for Dattatraya had himself filed one suit (L.C.S.No. 512 of 1928) and got his wife to file another suit (L.C.S.No. 578 of 1928) against the Government to escape liability from the payment of the Government dues (Vide Exs. 67 and 68). Both the suits were withdrawn unconditionally in the same way as L.C.S.No. 113 of 1928 was withdrawn. Being thus failed in their attempt to defeat the Government dues, all the parties concerned including Lingo Annaji passed a mortgage bond, dated 3-4-1930 in the name of the Secretary of State for India for the dues of the Government (Vide Ex. 81). It is significant to note that Lingo Annaji joined in passing the mortgage bond both in his individual capacity and as the guardian of Venkatesh alias Shripad and Rangubai. It is still more significant to find that in the list of mortgaged property are to be found all the landed property belonging to Dattatraya in the family of his alleged adoption, including the lands sold and mortgage to Lingo Annaji in the year 1922 i.e. R.S.Nos. 151/1, 158 and 16 of Belvanki and S.Nos. 24,133, 291/1 plus 2, 298 and 313 of Amargol. This circumstance strongly points to the facts of the compromise decree in S.No. 47 of 1925 and the award decree in S.No. 8 of 1926 being bogus and collusive as also the alienations made by Dattatra in the name of Lingo Annaji in the year 1922. The decrees in the said two suits were completely given a go by by the parties thereto and all the landed property of Dattatraya was given as security for the dues of the Govt.

There is another circumstance which also goes to show that the two decrees brought into existence on 11-1-1926 were not seriously intended to be acted upon. Rajaramsa Rajolli of Gadag had given L.D.No. 854 of 1926 on the file of the Gadag Court in execution of the decree in L.C. suit No. 92 of 1926 obtained by him against Dattatraya (Vide Ex. 60) and got attached the three Belvanki lands. Lingo Annaji had it appears given a mis. application No. 87 of 1927 for raising the attachment. The claim application was allowed in so far as the mortgage of 1922 was concerned but dismissed in regard to the rest of the claim i.e. the claim based upon the award decree in special C.S.No. 8 of 1926 , Lingo Annaji does not seem to have filed a regular suit to establish his right of ownership over the Belvanki lands which the award decree purpots to give him. If the decree was a bona fide transaction and if Lingo Annaji had really got the said lands under the award decree,hw would not have remained idle after the adverse decision of the mis. application.

(20). One of the terms of the compromise decree in special C.S.No. 47 of 1925 was that Lingo Annaji should take possession of the two lands allotted to the shares of Venkatesh alias Shripad and Rangubai, got his name entered in the revenue records as their guardian and make vahivat on their behalf till Venkatesh attained majority (Vide Ex. 58). Lingo Annaji's name was first entered as per terms of the decree, the latter however got his name removed by a registered deeed in consequence of which the Mamlatdar removed his name on 10-7-1926 and entered the name of Dattatraya as vahivatdar. Again on 20-7-1927 Dattatraya gave a vardi to delete his name and enter Lingo Annaji's name. That was done. But on 5-5-1929 the Mamlatdar ordered the deletion of the names of Shripad, Rangubai and Lingo Annaji and entry of the name of Dattatraya (Vide Ex. 73). An appeal was preferred to the prant officer III Division but it was dismissed (Vide Ex. 78). Since then, the two lands S.Nos. 24 and 313 remained in the name of Dattatra was owner and Khatedar till the year 1938 when the name of Vishvanathsa Rajaramsa was entered as an auction purchaser (Vide Ex. 99). It is no doubt true that in 1930 the two lands in question went into the possession of the Government under the mortgage bond Ex. 81. But, it is significant to note that from 1929 down to this day Shripad or Rangubai were not shown in the record of rights as owners. Dattatraya had leased the land S.No. 24 in 1925-1926 for a period of three years by taking the rent in advance .

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He had leased the other land in 1923-24 for a period of six years (Vide Ex. 94). There is no documentary or satisfactory evidence to show that Lingo Annaji was ever in possession of these two lands on behalf of Shripad and Rangubai between the years 1926 to 1930. It is not understood why he resigned from the guardianship of Shripad and Rangubai by means of a registered document, as stated in the Mamlatdar's order (Ex. 73). That was probably because Dattatraya was still prosecuting L.C. suit No. 17 of 1925 filed by him against the Government in which he had claimed to be the owner of S.Nos. 24 and 313 and obtained stay of the sale. In 1927 Lingo Annaji's name was again got entered in order to enable him to file a suit on behalf of Shripad and Rangubai as the suits filed by Dattatraya failed. As a matter of fact Lingo Annaji did file a suit in 1928 (L.C.No. 113 of 1928).

(21). The first darkhast given by Rajaramsa Rajolli of Gadag proved a failure as there were no bidders at the auction sale held by the Collector (Vide Ex. 60). He got the decree transferred to this Court and gave L.D.No. 750 of 1935 and got attached R.S.Nos. 24 and 313 of Amargol subject to the mortgage in favour of the Secretary of State for India. The execution papers were sent to the Collector for sale as Dattatraya was an agriculturist. A sale was duly held, The decree holder himself purchased the lands after obtaining the necessary permission. The sale was confirmed and a sale certificate issued (Vide Ex. 69). There was no application on behalf of Shreepad alias Venkatesh or Rangubai for raising the attachment. No suit was filed on their behalf declaring their rights to the said lands and asking for an injunction restraining Rajaramsa from bringing them to sale. Not only that, both Dattatraya and Lingo Annaji accepted the sale and asked Rajaramsa to pay off the mortgage debt due to the Government in as much as he had purchased the two lands subject to the said mortgage. Ex. 114 dated 1-1-194 is a registered notice given by Lingo Annaji to Vishvanathsa , son of Rajaramsa Rajolli calling upon him to pay off the mortgage debt due to the Government. [illegible] detailing the facts regarding the passing of th decree in L.C. suit No. 92 of 1926 in the Gadag Court against Dattatraya and the taking out of execution in L.D.No. 750 of 1925 in the Dharwar Court and the sale of S.Nos. 24 and 313 subject to the mortgage in favour of the Government, Lingo Annaji states in his notice :- ' you have obtained a sale certificate on 26-2-1938. You have taken symbolical

possession of the said lands as you could not get actual possession till the mortgage was satisfied. You have by the said purchase become owner of the said lands. The other lands comprised in the mortgage bond have now become freed from the mortgage encumbrance. I therefore call upon you to pay off the said mortgage debt within ~~either~~ eight days from ~~x~~ today". Dattatraya himself made an application to the Collector on 8-9-1938 to which he attached a statement in the following words:- I alone is responsible to satisfy the forest dues of the Government. S.Nos. 24 and 313 of Amargol are good lands. Government dues can be recovered from the said lands. One Rajaramsa of Gadag has purchased them subject to the mortgage in favour of the Government. It is both right and equitable to recover the amout due to the Government from the said Rajaramsa who has purchased my said two lands subject to the payment of the mortgage debt " (Vide Exs. 119 and 120). Both the application and the statement which accompanies it have been produced by the Government. They come from proper custody. They por ort to bear the signatures of Dattatra. From their contents, it would appear that Dattatrya and none else could have made them. I have therefore admitted them in evidence. It will thus be seen that both Dattatraya and Lingo Annaji accepted the sale of the two lands in suit and all that they were anxious about was to save the rest of the property from the mortgae charge.

(22). To complete the picture, a few more facts are necessary to be stated. On 8-1-1940, Vishvanathsa Rajolli sold the lands in dispute to the defendant No. 2 for Rs. 600 (Vide Ex. 113) on 20-4-1940 the provincial Government Bombay filed L.C. suit No. 189 of 1940 upon the mortgage bond passed in the year 1930 (Vide Ex. 75 copy of the decree). All the persons having an interest in the equity of redemption were impleaded to the suit. The suit ultimately ended in a decree on 27-2-1943 for Rs. 3413-4-4, costs of suit and future interest on Rs. 2409-4-4 at the rate of 6% per annum(Vide Ex. 74) copy of the judgment). Rangubai was defendant No. 5 in that suit. She remained absent and exparte. Venkatesh was defendant No. 6. He was by now a major. Although he appeared through a pleader in the beginning, now statement appears to have been put on his behalf. Dattatraya was defendant No. 2. He too put in no W. statement. Lingo Anno was deft 1 He died pending the suit and his son put in a W. statement in which he

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contended that the money due to the Government should be recovered from the defendant No. 9 i.e. (the present deft No. 2) or by sale of the two lands S.Nos. 24 and 313 purchased by him from Vishvanathsa Rajolli. This was in keeping with the notice given by Lingo Annaji to Vishvanathsa which I have already referred to. It is significant to note that neither Rangubai nor Venkatesh claimed in L.C. suit No. 189 of 1940. That S.Nos. 24 and 313 belonged to them by virtue of the partition decree in suit No. 47 of 1925 and that they were not liable to be sold in as much as the mortgage bond was not binding upon them. The decree in the said suit was binding upon both of them as much as against Dattatraya and others.

(23). Still on 30-7-1943, Venkatesh alias Shripad has purported to sell and the present plaintiff has purported to buy S.No. 24 for Rs. 4000 (Vide Ex. 104. The statements made in this sale deed are practically the same as those mentioned in the plaint. It is alleged that Dattatraya was addicted to vices and incurring debts for immoral and illegal purposes. Reference to L.C. suit No. 47 of 1925 (partition suit) is made and relied upon as giving him (Venkatesh) title to the land sold. The decree obtained by Rajaramsa Rajolli against Dattatraya in L.C. suit No. 92 of 1926 an the file of the Gadag Court is characterised as illegal and not binding upon the vendor. The sale in L.D.No. 750 of 1935 is termed unlawful as also the sale effected by Vishvanathsa in the name of the present deft 2. It is significant to note that no reference is made to the mortgage of 1930 and the mortgage decree obtained by the Government in L.C. suit No. 189 of 1940. I am thoroughly convinced that this sale deed does not represent a bona fide transaction. Although a sum of Rs. 4000 purports to have been paid to Venkatesh before the Sub-Registrar as con-sideration for the sale. deed, I am satisfied that that is only a make believe. No reasonable man would have paid Rs. 4000 as consideration for obtaining a sale deed from Venkatesh under the circumstances of the case. The plaintiff has purchased not a land but a litigation In his cores examination, he admitted that he had no personal knowledge about the debt incurred by Dattatraya with Rajaramsa Rajolli or about the circumstances under which Dattatraya had become indebted to the Government. He further admitted that he had prior knowledge of the possessory mortgage bond passed in 1930 in favour

the Government and of the decree obtained by the Government(Vide Ex. 101). Having all this knowledge, no person other than a confirmed litigant would go in for the purchase of the plaint land. In the year 1940 one Veerappa Manvi had obtained a decree for Rs 8000 against the plaintiff. In order to pay off the said debt, plaintiff had to take a loan from the land mortgage Bank . Part of that debt is still outstanding. One Neelakanthappa Kittur had obtained another decree for Rs . 1500 or Rs . 1600 against the plaintiff. That debt was subsisting at the date of the plaintiff's purchase of the suit plaint land. Plaintiff no doubt, owns about 100 Kurgis of landed property. But his financial position does not appear to be so sound as to enable him to purchase a land for Rs . 4000 in July 1943 ithout having recourse to borrowing. I entirely disbelieve him when he states in his re- examination that his annual income was Rs . 10,000. In my opinion, exaggeration cannot go further than this.

(24). As regards the plaintiff in the other suit, he is not a man of any substance at all. He is a avowed enemy of the defendant No. 2 and his natural father. He admitted in his cross examination that some 10 years before he was prosecuted for having assaulted and beat the natural father of the defendant No. 2 that he was convicted and fined Rs. 50. In 1929 he had mortgaged the only land. He owned for Rs . 2000. The mortgage has obtained a decree for Rs . 3000 and the decree of the Trial Court has been very recently confirmed in appeal. About 4 years before the village Society has obtained a decree for Rs . 700 against him u on a mortgage of his family house. The two debts are still outstanding. Kallanagouda owns no other immoveable property. It is hard to expect that such a person would have been able to pay Rs . 2000 as the price of a land. The vendor's title to which was not free from doubt, In this case, two documents have been obtained. The first is a deed of relinquishment for Rs . 500 dated 3-12-1943(Vide Ex. 102) and the second a sale deed for Rs . 2000, dated 6-12-1943 (Vide Ex. 110). The first named document purports to have been passed by Rangubai in the name of her son Shripad alias Venkatesh and the second by the latter in the name of Kallanagouda . The consideration for either deed has not been paid before the Sub-Registrar. Venkatesh who is examined at Ex. 111 admits having received the full consideration for both the sale deeds but I do not believe him. The plaintiff in both the suits are admittedly

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friends and common enemies of the defendant No. 2 and his natural father- That is the reason why they have planned to obtain sale deeds from Shripad (defendant No. 3) and if possible to wrest the lands from the defendant No. 2. It is significant to note that the plaintiff in this suit (Gulappa Kallappa) has attested the release deed Ex. 102 passed by Rangubai in the name of her son. Dattatraya (defendant No. 4) has attested the sale deed dated 6-12-1943 passed by Shripad in the name of Kallanagouda. The reason why a relinquishment deed was obtained from Rangubai was that in the partition decree, she was given a life interest in S.No. 313 after which it was to go to her male descendants in preference to daughters . Defendants 3 and 4 and Rangubai, all live together at Hubli at the present moment. In this connection I entirely disbelieve the defendant No. 3 when he states that he does not know where his father lived at Hubli although he admitted that both worked at the same office.

(25). I have already shown how Dattatraya and Lingo Annaji had accepted the auction sale of S.Nos. 24 and 313 in execution of the decree obtained by Rajaramsa of Gadag and how they tried to throw the entire mortgage debt due to the Government on the shoulders of Vishvanathsa (Vide Exs. 114, 119 and 129). In 1938 and 1940 they were satisfied if the entire mortgage debt was thrown over S.Nos. 24 and 313. They were then anxious to save the rest of the property. But when in 1943, Dattatraya and Shreepad found in the plaintiff in these two suits persons willing to obtain sale deeds regarding the said two lands, they readily consented and passed the sale deeds. It is not known what exactly the plaintiff paid to Shreepad and Dattatraya but it was certain-ly not the price recited in the sale deeds. Under these circumstances of the case it must not have been a big amount. The plaintiffs are any thing but bona fide purchasers for value without notice of the rights of the defendant No. 2 and his predecessor-in-title . They have deliberately gone in for the purchase of the plaint lands, intending to take the risk of a costly litigation. The auction sale of the plaint lands in execution of the decree obtained by Rajaramsa against Dattatraya is binding upon the latter's son Venkatesh. Under Hindu law, " where the father has contracted a debt for his own personal benefit, the creditor may obtain a money decree against the father alone, and may enforce the decree by attachment and sale of the entire coparcenery

property including the son's interest therein. The sons though not parties to the suit are bound by the sale by reason of their pious duty to pay their father's debt, and they cannot recover their share of the property unless they prove that the debt was contracted by the father for an immoral or illegal purpose" (Vide Mulla's Hindu law 1940 Edition page 347).

(26). The learned pleader for the plaintiff relied upon the ruling in Surajmal Vs. Motican (41 Bom. L.R. 1177) in support of his argument that the auction sale of S.Nos. 24 and 313 was not binding upon Venkatesh. But, in view of my finding that no real partition has ever taken place between Dattatraya and the latter's son Venkatesh, the said ruling does not apply to the facts of this case. In order to effect a severance of status between the father and the son, the partition must be genuine and bona fide and not a cloak or a compromise to defeat and delay the creditors of the father. That question was raised in the case in 41 Bom. L.R. 1177 but not decided by the Trial Court. For that reason, the High Court remanded the suit to the trial Court. It has been held in 37 Bom. L.R. 925 that a partition of the joint family immoveable property between coparceners of the family operates as a transfer within the meaning of the term as defined in section 5 of the Transfer of Property Act, 1882 and if fraudulent, falls within section 53 of the Act. In this case, the alleged partition between Dattatraya and his son Venkatesh was not only fraudulent within the meaning of section 53 of the T.P.Act, but that it was never intended to be acted upon and as a matter of fact was never acted upon. It was given a decent burial in 1930 when a mortgage bond was passed in favour of the Government for Dattatra's debt. I therefore hold that the auction sale of the plaint lands was binding upon the deft 3 and that by that sale the lands effectively passed to the auction purchaser. Deft No. 3 had no interest left in the said lands and by obtaining sale deeds from him the plaintiff got no interest themselves.

(27). S.Nos. 24 and 313 were amongst the lands mortgaged with possession to the Government in the year 1930. The Government was leasing out the lands every year. In 1940-41 , the two lands together fetched a rent of Rs. 105 only (Vide Ex. 8). In 1942-43, they fetched a rent of Rs. 140 (Vide Ex. 4 in L.C.No. 487 of 1943). In 1943-44, the Panch valuation was Rs. 250 only. But the present plaintiff began to raise the bids and carried the figure to nearly Rs. 1600. Ultimately the deft 2's

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bid for Rs. 1600 was accepted and he was let into possession of the plaint lands. The idea of the plaintiff was some how or other got into possession of the lands and drive the defendant No. 2 to a suit for possession. Being practical men well versed in litigation they knew that possession was nine points of law. The defendant No. 2 saw through the game and out beat the plaintiff and took the lands in his possession by offering the phenominal figure of Rs. 1600 as rent of the plaint lands for one year only. In one way he was justified in doing so, because he had purchased the lands subject to the mortgage decree in favour of the Government and he has to satisfy the said debt. The sum of Rs. 1600 offered by him as rent of the lands would go towards the reduction of the said debt and that way he would get the benefit of the payment. In the beginning of the year 1944-45 defendant No. 2 paid off the balance of 1708-9-0 (Vide Ex. 96). The Collector accepted the payment and ordered the delivery of possession of the lands to the defendant No. 2 (Vide Ex. 70). The plaintiffs were this failed in their attempt to secure possession of the lands, sit tight over them and drive the deft 2 to sue for possession. As the plaintiffs have given up their claim against the Government and as the mortgage decree in L.C. suit No. 189 of 1940 was binding upon them under any circumstances, and as the defendant No. 2 has paid off the said mortgage decree, they cannot in equity get possession of the lands from the defendant No. 2 unless and until they reemburse him. The defendant No. 2 has paid Rs 1708-9-0 on 16-6-1944. He paid 1600 as rent of the plaint lands for 1943-44. The figure of Rs. 1600 does not represent the real rent of the lands. I would take it at the panch valuation of Rs 250 This means that the defendant No. 2 has paid Rs 1708-940 plus Rs. 1350 i.e. in all Rs. 3058-9-0, towards the satisfaction of the mortgage debt. This the plaintiff are bound to pay even if they be held entitled to the possession of the lands.

(28). The withdrawal of L.C. suit No. 113 of 1928 without permission does not affect the plaintiff's right to file these suits. The causes of action in that suit and these suits are different -

The real claim in this suit is against the defendant No. 2. His predecessor in title was not a party ... O.S. suit No. 113 of 1928 Defendant No. 3 and consequently the plaintiff, would have been precluded from instituting a fresh suit against the Government for avoiding the Government dues. By reason of the passing of the mortgage bond, in 1930, the position taken by on behalf of the present defendant 3 in 1928 was altered completely.

(29). The result is that the two suits fail and must be dismissed with costs. I record my finding as above upon the issues framed and pass the following order. A separate order will be passed in the other suit.

ORDER.

(30). Suit dismissed with costs. Plaintiff to pay the costs of the defendants 1 and 2 in separate sets. Defendants Nos. 3 and 4 to bear their costs, if any.

18-4-1945. Sd/ M.S.Bagali.

First Class Sub-Judge.

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[redacted]

sd/- N. R. Teragundi
ಕಾರಕೂನ

(Seal)

sd/- M. S. Bagali
J. C. Sub Judge
21-4-45

ಅಂಡಿಯರು ಲಿಸ್ಟರರು :-
ಪ್ರತಿವಾದಿಯರು ಲಿಸ್ಟರರು :-
ನಾಲ್ಕು ಸಾಕ್ಷಿ

ಈ ಪ್ರಕರಣದಲ್ಲಿ ಅಪೀಲುದಾರರು ಮೊದಲನೆಯ ಪ್ರತಿವಾದಿಯವರಾಗಿದ್ದು ಅವರು ಮೊದಲನೆಯ ಪ್ರತಿವಾದಿಯವರ ಮೇಲೆ ಮಾಡಿದ ಅರ್ಜಿಯನ್ನು ಅಂಗೀಕರಿಸಿ ಅವರಿಗೆ ಸಮನ್ಸು ಜಾರಿಯಾಗಿದ್ದು ಅವರು ಹಾಜರಾಗಿ ಅವರ ಮೇಲೆ ಮಾಡಿದ ಅರ್ಜಿಯನ್ನು ಅಂಗೀಕರಿಸಿದ್ದರಿಂದ ಅವರು ಈ ಅಪೀಲಿನಲ್ಲಿ ಪ್ರತಿವಾದಿಯವರಾಗಿದ್ದಾರೆ. ಅಪೀಲುದಾರರು ಮೊದಲನೆಯ ಪ್ರತಿವಾದಿಯ

71 87

Suits

Dharwar.
For a declaration that the mortgage is void and illegal and for possession of the mortgaged property.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 6619
Bombay Castle, 5th September 1945.

at sl.no.A
AF p.i. cont.

× Read Government Resolution, Legal Department No.5198 dated the 22nd July 1944.

× Letter from the District Government Pleader, Dharwar No.381 dated 20th August 1945 - Stating that the suit noted in the margin was decided by the First Class Sub Judge, Dharwar on 18th April 1945 and the following order was passed:-

In the Court of the First Class Subordinate Judge, Dharwar.	
Civil Suit No.503 of 1943.	
Gulappa Kallappa Holiyannavar. . . . Plaintiff; versus	
The Province of Bombay. . . . . Defendant.	
Claim - Rs.4,000.	

"Suit dismissed with costs. Plaintiff to pay the costs of the defendants 1 and 2 in separate sets. Defendants Nos.3 and 4 to bear their costs if any." and forwarding uncertified copies of the judgment and decree.

RESOLUTION.- Result of the Civil Suit No.503 of 1943 is recorded.

By order of the Governor of Bombay,

for (P. N. MOOS,
(Secretary to Government.

To

The Revenue Department.

The Commissioner, Southern Division.

The Collector of Dharwar.

Issued
USP
7/9

orders at P. 3 ante

Subd. for signature
mak
7/9

P.A. P.K. 7/9
A.S

Submitted after issue

File in S. Dwr 10/44

mak
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